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Executive Office for United States Attorneys

United States Attorneys' Bulletin

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William P. Tyson, Director

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

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Please send change of address to Editor, United States Attorneys' Bulletin, Room 1629, Main Justice Building, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

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COMMENDATIONS

Assistant United States Attorney JAMES E. BERLINER, Central District of California, was commended by Mr. Richard T. Bretzing, Special Agent-in-Charge, Federal Bureau of Investigation, Los Angeles, California, for his successful prosecution of Scott Allan Freeburg.

Assistant United States Attorney CHRISTINE S. BYRD, Central District of California, was commended by Mr. Patrick J. Neri, Assistant Inspector General for Investigation, Department of Housing and Urban Development, for her successful prosecution of United States v. Wright and Sanders.

Assistant United States Attorneys WILLIAM J. EDWARDS and ANN C. ROWLAND, Northern District of Ohio, were commended by Mr. William H. Webster, Director, Federal Bureau of Investigation, for their successful prosecution of Fred M. Mosely.

Assistant United States Attorney MICHAEL W. EMMICK, Central District of California, was commended by Mr. Richard T. Bretzing, Special Agent-in-Charge, Federal Bureau of Investigation, Los Angeles, California, for his successful prosecution of United States v. Whitehurst.

Assistant United States Attorney CARMEN ESPINOSA VANKIRK, District of Connecticut, was commended by Mr. William H. Webster, Director, Federal Bureau of Investigation, for her contributions to the investigation and resolution of the $7.2 million theft from the Wells Fargo terminal in Connecticut.

Assistant United States Attorney A. PATRICIA FROHMAN, District of Columbia, was commended by Mr. Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Department of Treasury, for her excellent representation in Writ of Attachment directed to Bureau of the Public Debt, ISC, Inc. v. MCB Information Systems, Inc.

Assistant United States Attorney DAVID GFNESON, District of Columbia, was commended by Mr. Stephen S. Trott, Assistant Attorney General, Criminal Division, Department of Justice, for his hard work in obtaining a successful conclusion in the case against Piher Semiconductores, S.A.

Assistant United States Attorney THEODORE S. GREENBERG, Eastern District of Virginia, was commended by Mr. William H. Webster, Director, Federal Bureau of Investigation, for his important contributions to the successful conclusion of the case against Ronald Ray Rewald.

Assistant United States Attorney TIMOTHY B. HANEY, Middle District of Pennsylvania, was commended by Mr. Stephen E. Higgins, Director, Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury, for his outstanding performance in the successful prosecution of United States v. Goodman.

Assistant United States Attorney JANICE MILLER KARLIN, District of Kansas, was commended by Mr. William A. Powell, Regional Administrator, and Mr. W. Donald Boe, Jr., Regional Counsel, Kansas City Regional Office, Small Business Administration, for her successful conclusion of LaForge & Budd Construction Co. v. Army Corps of Engineers.

Assistant United States Attorney LAWRENCE J. LEISER, Eastern District of Virginia, was commended by Mr. John J. O'Connor, Special Agent-in-Charge, Federal Bureau of Investigation, Alexandria, Virginia, for his prosecutive successes in a number of highly complex FBI matters.

Assistant United States Attorney JOEL V. MERKEL, Southern District of Illinois, was commended by Mr. John G. Mendoza, Senior Resident Agent, Fish and Wildlife Service, Department of the Interior, for his whole-hearted assistance and vigorous advocacy in prosecuting seven defendants for violations of the federal wildlife laws.

Assistant United States Attorneys RONALD J. NESSIM and DAVID W. WIECHERT, Central District of California, were commended by Mr. Charles M. Yarton, Postal Inspection Service, Los Angeles Division, for their investigation and prosecution of United States v. Moore.

Assistant United States Attorney C. JOSEPH RUSSELL, Southern District of Indiana, was commended by Mr. Allan B. Hubbard, President, E & A Industries, Inc., for his outstanding job in prosecuting Crosave Auto Parts, Inc.

Assistant United States Attorney PAUL L. SEAVE, Central District of California, was commended by Ms. Janet M. Grady, Regional Director, Federal Trade Commission, for his successful prosecution of Trans-Alaska Energy Corp.

Assistant United States Attorney KIERAN JOSEPH SHANAHAN, Northern District of Georgia, was commended by Mr. Thomas W. Stokes, Special Agent-in-Charge, Bureau of Alcohol, Tobacco, and Firearms, Department of the Treasury, for his successful investigation and prosecution of United States v. Mann.

Assistant United States Attorney KENNETH P. SNOKE, Northern District of Oklahoma, was commended by Mr. Paul A. Adams, Inspector General, Department of Housing and Urban Development, for his successful prosecution of a major fraud case.

CLEARINGHOUSE

Destruction of Bulk Drug Evidence

The United States Attorney's office for the Southern District of California has adopted procedures designed to alleviate the storage problems associated with the seizure of bulk narcotics.

All new cases involving drug seizures are presented by a Special Agent of the Drug Enforcement Administration (DEA) to the reviewing Assistant United States Attorney (AUSA), who makes a preliminary decision whether to approve destruction of the contraband or retain it for a period of time. The decision is then noted on the Case Information form in the case file.

If destruction is appropriate, the AUSA will serve upon defense counsel "Notice of Government's Intention to Destroy All But Samples of Controlled Substances." This places the burden upon the defendant to give notice within 14 days of his opposition to the destruction and establish at a hearing before the Magistrate satisfactory reasons for retaining the bulk evidence. If destruction is opposed and the AUSA determines that destruction of the contraband is crucial in light of storage problems, then the appropriate Motion to Destroy Seized Evidence, supporting Affidavit and Order are prepared by the assigned AUSA and filed with the court.

In cases where an AUSA or the Chief of the Narcotics Unit deems it inappropriate to destroy the seized contraband, a review of the file will thereafter be conducted on a regular basis until destruction is appropriate or the matter is concluded. On a quarterly basis, DEA provides the United States Attorney's office for the Southern District of California with a list of all pending controlled substance cases involving substantial amounts of bulk controlled substances. Upon receipt of this list, a supervisory secretary pulls the file, reviews the case, and reminds the assigned AUSA to review the case to determine if retention is still appropriate or if it is possible to destroy the evidence. For unassigned drug cases, the Chief of the Narcotics Unit or the Task Force Coordinator reviews the case and makes this determination. "Status of Evidence in Drug Cases" forms are then completed by the AUSA assigned to handle the criminal matter through trial. The original "Status" form is forwarded to the individual at DEA responsible for monitoring the quarterly review; a copy is retained in the case file. Once the Status form is received by DEA, appropriate steps are taken by that agency to destroy the seized evidence in a timely manner.

Copies of the forms used by the United States Attorney's office are available from this office (FTS 633-4024). Please request Clearinghouse item number CH-24.

(Executive Office)

Legal/Policy Advisory on Asset Forfeiture Matters

The Asset Forfeiture Office of the Criminal Division prepares advisories on numerous legal/policy issues each month in the course of their regular duties.

A copy of the following advisory may be obtained by contacting the Office of Legal Services, Executive Office for United States Attorneys, at FTS 633-4024:

> Opinion No. L85-22--Advisement Against Proposing Judicial Orders Which Specifically Direct Forfeited Property to be Shared With State and Local Agencies.
>
> Please ask for item number CH-25.

(Executive Office)

POINTS TO REMEMBER

Amendment to Rule 6(e), Federal Rules of Criminal Procedure Permitting Certain Disclosure to State and Local Law Enforcement Officials

The Criminal Division has established guidelines for (1) the submission of requests for permission to seek a disclosure order for grand jury materials under Rule 6(e)(C)(iv), and (2) the determination of whether to approve such requests. Subsequently, the guidelines will be published as a bluesheet to the United States Attorneys' Manual.

The Supreme Court added a new subdivision, 6(e)(3)(C)(iv), in an amendment effective August 1, 1985. Its purpose, as stated in the Advisory Committee (on Criminal Rules of the Judicial Conference) notes, was to eliminate "an unreasonable barrier to the effective enforcement of our two-tiered system of criminal laws . . . [by allowing] a court to permit disclosure to a state or local official for the purpose of enforcing state law when an attorney for the government so requests and makes the requisite showing."

The new subdivision reads as follows: "(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made . . .

> (iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct."

It is both the intent of the amended rule, and the policy of the Department of Justice, to share such grand jury information wherever it is appropriate to do so. Thus, the phrase "appropriate official of a state or subdivision of a state" shall be interpreted to mean any official whose official duties include enforcement of the state criminal law whose violation is indicated in the matters for which permission to disclose is to be sought. This policy is, however, subject to the caution in the Advisory Committee notes that "[t]here is no intention . . . to have [f]ederal grand juries act as an arm of the state."

It is thus clear that the decision to release or withhold such information may have significant effects upon relations between federal prosecutors and their state and local counterparts, and that disclosure may raise issues which go to the heart of the federal grand jury process. In this respect, the Assistant Attorney General in charge of the Criminal Division (who is a member of the Advisory Committee) promised the Advisory Committee that prior to any request to a court for permission to disclose such grand jury information, authorization would be required from the Assistant Attorney General in charge of the Division having jurisdiction over the matters that were presented to the grand jury. (In the case of a multiple-jurisdiction investigation (e.g., tax, non-tax) requests should be made to the Assistant Attorney General of the Division having supervisory responsibility for the principal offense(s) being investigated.) It is the policy of the Department that such prior authorization be requested in writing in all cases. A copy of such requests shall be sent to all investigating agencies involved in the grand jury investigation.

To insure that grand jury secrecy requirements are not violated in the submitting of such requests, place the following legend at the top and bottom of each page of the request:

GRAND JURY INFORMATION:
Disclosure restricted by Rule 6(e),
Federal Rules of Criminal Procedure

In addition, the entire packet shall be covered with a plain white sheet having the word "SENSITIVE" stamped or typed at the top left and bottom right corners.

United States Attorneys, seeking permission to apply for a disclosure order, shall request permission from the Assistant Attorney General of the Division having jurisdiction over the grand jury matter by submitting a written request expressly addressing all elements necessary for these officials to comply

with the standards set forth below in making their decision. Requests submitted to the Criminal Division shall be sent to the Head, Legal Support Unit, Office of Enforcement Operations. Ones submitted to other divisions shall be sent to the appropriate contact person listed at the conclusion of this article. There is no requirement that a "particularized need" be established for the disclosure, but there should be a substantial one. The need to prosecute or to investigate ongoing or completed state or local felony offenses will generally be deemed substantial.

Persons making requests for authorization should provide the following information:

1. title of grand jury investigation and involved target(s);

2. origin of grand jury investigation;

3. general nature of investigation;

4. status of grand jury investigation;

5. state(s) for which authorization to disclose grand jury matters is sought;

6. nature and summary of information sought to be disclosed;

7. general nature of potential state offenses;

8. impact of disclosure to state(s) on ongoing federal grand jury investigative efforts or prosecutions;

9. extent of prior state involvement, if any, in federal grand jury proceedings under Rule 6(e)(3)(A)(ii);

10. extent, if any, of state knowledge or awareness of federal grand jury investigation;

11. existence, if any, of ongoing state investigations or efforts regarding grand jury matters sought to be disclosed; and

12. any additional material necessary to enable the Assistant Attorney General to evaluate fully the factors which the following paragraph requires them to consider in making a decision.

In making a determination on whether to authorize the seeking of permission to disclose, each Assistant Attorney General shall consider all relevant factors including whether:

1. the state has a substantial need for the information;

2. the grand jury was convened for a legitimate federal investigative purpose;

3. disclosure would impair an ongoing federal trial or investigation;

4. disclosure would violate a federal statute (e.g., 26 U.S.C. §6103) or regulation;

5. disclosure would violate a specific departmental policy;

6. disclosure would reveal classified information to persons without an appropriate security clearance;

7. disclosure would compromise the government's ability to protect an informant;

8. disclosure would improperly reveal trade secrets; and

9. reasonable alternative means exist for obtaining the information contained in the grand jury materials to be disclosed.

If the request is authorized, the government attorney who seeks permission to disclose shall include in the proposed order a provision that further disclosures by the state officials involved shall be limited to those required in the enforcement of state criminal laws.

Please send a copy of any order denying a request for permission to disclose to the Assistant Attorney General who authorized the filing of the request.

* * * *

The following divisions of the Department have designated the listed individuals to answer questions regarding Rule 6(e)(3)(C)(iv).

Antitrust Division
Director of Operations.....Joe Widmar.....633-3543

Civil Rights Division
Deputy Chief, Criminal Section.....Dan Bell.....633-4071;
Deputy Chief, Criminal Section.....Barry Kowalski....633-4067

Criminal Division
Head, Legal Support Unit,
Office of Enforcement Operations...David Simonson....724-6672

Land and Natural Resources Division
Director, Environmental Crimes Unit
Environmental Enforcement Section..Judson Starr.....633-2490

Tax Division
Senior Assistant Chief, Office of Policy and Tax Enforcement Analysis,
Criminal Section.....Ed Vellines.....633-3011

(Criminal Division)

Attorney General's Advisory Committee of United States Attorneys

The Attorney General's Advisory Committee of United States Attorneys, formed in September 1973, gives the United States Attorneys a voice in departmental policies. In advising the Attorney General, the Committee conducts studies and makes recommendations to improve management of United States Attorney operations and the relationship between the Department and federal prosecutors. Additionally, the Committee helps formulate new programs for improvement of the criminal justice system and the delivery of legal services at all levels. New members are appointed each year to provide broad representation of United States Attorneys nationwide.

Attorney General Edwin Meese III has appointed the following four new members to the Attorney General's Advisory Committee of United States Attorneys:

Donald B. Ayer, Eastern District of California (Sacramento)
Daniel A. Bent, District of Hawaii (Honolulu)
John D. Tinder, Southern District of Indiana (Indianapolis)
Rodney S. Webb, District of North Dakota (Fargo)

The other Committee members are:

William F. Weld, Chairman, District of Massachusetts; (Boston)
Kenneth W. McAllister, Vice-Chairman, Middle District of North Carolina (Greensboro)
Brent D. Ward, Vice-Chairman, District of Utah (Salt Lake City)
Joe B. Brown, Middle District of Tennessee (Nashville)
James W. Diehm, District of the Virgin Islands (St. Croix)
Joseph E. diGenova, (Ex Officio) District of Columbia (Washington, D.C.)
Frank W. Donaldson, Northern District of Alabama (Birmingham)
Helen M. Eversberg, Western District of Texas (San Antonio)
Rudolph W. Giuliani, Southern District of New York (New York)
Frederick J. Hess, Southern District of Illinois (East St. Louis)
John E. Lamp, Eastern District of Washington (Spokane)
Robert G. Ulrich, Western District of Missouri (Kansas City)

(Executive Office)

Authorization to Initiate RICO Actions

The Criminal Division has requested that Assistant United States Attorneys be reminded of the approval requirement for all actions, civil or criminal brought by the United States under the RICO statute, 18 U.S.C. §§1961-1968. Section 9-110.101 of the United States Attorneys' Manual provides, in pertinent part:

> No RICO criminal or civil prosecutions or civil investigative demand shall be issued without the prior approval of the Organized Crime and Racketeering Section, Criminal Division.

This requirement extends to criminal indictments and information, including cases in which the defendant is agreeing to plead guilty. This requirement also extends to the inclusion of a RICO cause of action in any civil complaint for damages or injunctive relief in any case brought by the United States.

If you have any questions about the scope of this approval requirement, you should consult the guidelines contained in the United States Attorneys' Manual at Section 9-110.101, or seek guidance from Paul Coffey, Deputy Chief of the Organized Crime and Racketeering Section, at FTS 633-3594 in Washington.

(Criminal Division)

Bluesheets and Transmittals, United States Attorneys' Manual.

Updated lists of United States Attorneys' Manual Bluesheets and Transmittals are appended to this Bulletin.

(Executive Office)

Contract Fraud In Federal Disadvantaged Business Enterprise Programs

The Economic Crime Council is concerned with the growing number of reports of fraud and abuse in federal disadvantaged business enterprise (DBE) programs, and requests the cooperation of United States Attorneys and Assistants in determining the extent and seriousness of these abuses.

Federal DBE participation programs, which have been established in all agencies having significant procurement activities, require certain percentage levels (typically 10%) participation by qualified DBEs in federal contracts. A low bid proposal from a prime contractor that does not meet the predetermined DBE participation requirement may be considered non-responsive. Federal agency investigators have uncovered elaborate schemes involving

the use of sham DBEs by large contractors to thereby appear to comply with DBE participation requirements. Discussions with agency contracting and investigative personnel indicate that these types of abuses are widespread. Case file reviews, however, show inconsistent and sometimes inadequate responses by investigators and prosecutors to DBE fraud complaints.

To address the DBE fraud problem, a Washington, D.C.-based coordinating group made up of senior investigative personnel from various federal agencies and Fraud Section attorneys, Barbara Bandfield and William Sellers, has been organized. The mission of the coordinating group is to explore the extent to which fraud is a problem and design and implement an appropriate enforcement strategy. A first step in this effort has been to assess the enforcement efforts in the area of DBE fraud within the Office of Inspector General of each participating agency, paying particular regard to ongoing investigative matters. This will aid in focusing investigative resources on targets with significant multi-agency impact.

Although, to date, only a handful of cases have been prosecuted, this number is clearly on the increase. Please advise the coordinating group of any significant developments relating to DBE fraud in your districts by contacting Barbara Bandfield (FTS 724-7122).

(Economic Crime Council)

Cumulative List of Changing Federal Civil Postjudgment Interest Rates.

Appended to this Bulletin is an updated "Cumulative List of Changing Federal Civil Postjudgment Interest Rates," as provided for in the amendment to the Federal Postjudgment Interest Statute, 28 U.S.C. §1961, effective October 1, 1982.

(Executive Office)

Foreign Travel

The Department of State is concerned about the short notice given them by Assistant United States Attorneys who intend to travel to foreign countries in an official government capacity.

The embassies of foreign countries often require the State Department to notify them at least ten days in advance of the arrival date of officials to provide sufficient time for the approval process. The embassies are responsible for obtaining clearance. In many instances, clearance must be obtained before official business can be conducted.

It is understood that conditions sometimes do not allow for a ten day advance notice of travel. The State Department, however, should be notified at the earliest possible time. The appropriate staff of the Executive Office will make every effort to obtain the necessary approvals.

Foreign travel, official government passport applications, and State Department clearances should be processed through Maria Fulginiti, Financial Management Staff of the Executive Office. (A checklist for foreign travel is appended to this Bulletin. See also, USAM 10-3.550 (March 28, 1984).) Executive Office staff are here to assist you, however, you should make reasonable efforts to anticipate foreign travel and send in the requisite paperwork before the crisis begins.

Your cooperation in this matter is appreciated. If you have any questions regarding foreign travel, please contact Ms. Fulginiti on FTS 272-6935.

(Executive Office)

Requests to Engage in Outside Employment: Teaching

Department of Justice regulations regarding private professional practice and outside employment were amended on October 27, 1981. 46 Fed. Reg. 52358, October 27, 1981. Teaching is no longer considered "professional practice" requiring prior authorization. 28 C.F.R. §45.735-9(a). Employees who wish to undertake such teaching engagements are directed to consult 28 C.F.R. §45.735-12, which generally requires prior approval by the Deputy Attorney General only when the use of non-public information is contemplated. Employees should be cautious to avoid any conflict of interest with their position and to insure that no interference occurs with the performance of their official duties. However, prior approval for teaching when use of public information is contemplated is not required. If you have any questions, call the Office of Legal Services at FTS 633-4024.

(Executive Office)

Statutes With Forfeiture Provisions Enforced By The FBI

Ten statutes enforced by the Federal Bureau of Investigation (FBI) permit civil and/or criminal forfeiture and two statutes permit quasi-criminal forfeiture. (The forfeiture provisions of these statutes are identified below along with information as to whether or not sharing is permitted.) The ten statutes incorporate Customs Laws procedures (Title 19, United States Code, Section 1602 et seq.). Of these ten statutes, nine provide for civil

forfeiture. These statutes, containing civil forfeiture provisions, provide for administrative or judicial procedures. The FBI, however, currently has authority delegated by the Attorney General to forfeit only property seized for violation of one of these statutes administratively--the Comprehensive Drug Abuse Prevention and Control Act of 1970.

Currently pending approval are amendments to Title 28, Code of Federal Regulations, Part 8 which will permit the FBI administratively to forfeit property pursuant to the eight non-drug related statutes. United States Attorneys will be advised when this authority has been delegated. Until such time, all civil forfeitures pursuant to these eight statutes must be handled in a judicial proceeding.

STATUTES WITH FORFEITURE PROVISIONS ENFORCED BY THE FBI

Statute	Forfeiture Citation	Type of Forfeiture	Sharing Permitted
1. COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970 (Controlled Substances Act (CSA))	21 USC 853 21 USC 881	Criminal Civil	Yes Yes
2. ORGANIZED CRIME CONTROL ACT OF 1970 (Racketeer Influenced and Corrupt Organizations (R_CO) Statute)	18 USC 1963	Criminal	Yes
3. COPYRIGHTS ACT	17 USC 506(b) 17 USC 509(a)	Criminal Civil	No Yes
4. MOTOR VEHICLE THEFT LAW ENFORCEMENT ACT OF 1984	18 USC 512	Civil	Yes
5. ORGANIZED CRIME CONTROL ACT OF 1970 (Prohibition of illegal gambling businesses (IGB) Statute)	18 USC 1955(d)	Civil	Yes
6. INTERSTATE AND FOREIGN COMMERCE - GAMBLING DEVICES - TRANSPORTATION PROHIBITED (Transportation of Gambling Devices Statute)	15 USC 1177	Civil	Yes
7. CHILD PROTECTION ACT OF 1984 (Sexual Exploitation of Children)	18 USC 2253 18 USC 2254	Criminal Civil	Yes Yes

8. OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 (Wire Interception and Interception of Oral Communications (IOC) Statute)	18 USC 2513	Civil	Yes
9. FOREIGN WARS, WAR MATERIALS AND NEUTRALITY ACT (Illegal Exportation of War Materials Statute	22 USC 401	Civil	Yes
10. CRIMES AND CRIMINAL PROCEDURE (Prison-Made Goods Statute)	18 USC 1762	Civil	Yes
11. OBSCENE MATTER - MAILING - TRANSPORTATION (Transportation of Obscene Matters For Sale or Distribution Statute)	18 USC 1465	Quasi-Criminal	No
12. CRIMES AND CRIMINAL PROCEDURE (Bribe Moneys Statute)	18 USC 3612	Quasi-Criminal	No

(Federal Bureau of Investigation)

Storage and Protection of Evidence

A breach of security (as well as violation of federal law) recently occurred when evidence (including drugs) was stolen from the safe in a United States Attorney's office. United States Attorneys and their Assistants are reminded of their responsibility to maintain appropriate controls for the storage, protection, and handling of case-related evidence, particularly, money, illegal drugs, weapons, etc.

Evidence seized by an investigative agent is the responsibility of that agency and, in most instances, such evidence should be retained and controlled by the case agent until such time as the Assistant United States Attorney has a need to examine the material in preparation for presentation in court. Chain of custody procedures are critical and are a requirement (e.g. procedures requiring the signing of receipts for the material while under their control) to establish for the record that the evidence in question has remained under the control of proper authority from the time of arrest until presented in court.

If evidence is retained in the United States Attorney's office during the day or after hours, appropriate safeguards should be in place to ensure that the evidence is "not tainted" or subjected to theft or other conditions detrimental to the government's case. See USAM 9-4.190; 10-4.380. United States Attorney

personnel should use appropriate three-way combination security containers, walk-in vaults, etc., to secure evidence while in their custody. Combinations to these facilities should be protected (e.g. should not be listed on a rolodex under the word "safe") and dissemination of the combination should be limited to only an absolute minimum number of personnel, i.e., only those individuals with a need to know.

Evidence should never be left unattended; nor should it be left in the possession of persons, including other United States Attorney personnel, federal agents, etc., that have no connection with the case.

Department of Justice policy regarding the pretrial destruction of evidence may be found in the United States Attorneys' Manual at USAM 9-101.500. Please contact Mr. Richard Kidwell, Assistant Director, Facilities Management and Support Staff, FTS 272-6942, if you have further questions or require assistance to comply with these security requirements.

(Executive Office)

Teletypes to All United States Attorneys

A listing of recent teletypes sent by the Executive Office is appended to this Bulletin. If a United States Attorney's office has not received one or more of these teletypes, copies may be obtained by contacting the Communications Center, Executive Office for United States Attorneys, at FTS 633-1020.

(Executive Office)

CASENOTES

OFFICE OF THE SOLICITOR GENERAL

The Solicitor General has authorized the filing of:

A petition for certiorari in United States v. Ben M. Hogan Co., 769 F.2d 1293 (8th Cir. 1985). The question presented is whether a jury instruction, creating a conclusive presumption on one element of a Sherman Act offense, was a harmless error where the evidence was sufficient to sustain that element and was not contested by the defendant at trial.

A petition for certiorari in People of the Village of Gambell v. Hodel, 774 F.2d 1414 (9th Cir. 1985). The questions presented are (1) whether the Secretary of the Interior must comply with the

subsistence protection provisions of the Alaska National Interest Lands Conservation Act, 16 U.S.C. §3120, before he may lease offshore tracts for oil and gas exploration and development; and (2) whether the court of appeals erred in failing to engage in a balancing of the equities before ordering the district court to enter a preliminary injunction against the Secretary.

A protective petition for certiorari in United States v. Harris, 768 F.2d 1240 (11th Cir. 1985). The issue is whether a provision of the Panama Canal Treaty exempts from United States taxation the salaries paid to United States citizens employed by the Panama Canal Commission.

A brief amicus curiae in Memphis Community Schools v. Stachura, 763 F.2d 211 (6th Cir. 1985). The question is what are the proper jury instructions to be given on the amount of damages that may be awarded based upon the value of a constitutional right which has been violated.

A brief amicus curiae in City of Riverside v. Rivera, 763 F.2d 1580 (9th Cir. 1985). The issue is whether, in a case that results solely in an award of money damages, a "reasonable attorney's fee" under 42 U.S.C. §1988 should be reasonably related to the amount of damages received by the plaintiff.

A brief amicus curiae in Smalis v. Pennsylvania, 490 A.2d 394 (Penn. 1985). The question is whether the Double Jeopardy Clause permits a prosecution appeal from a ruling, made on defense motion at the close of the prosecution's case in a nonjury trial, that the evidence is insufficient as a matter of law to prove guilt.

A direct appeal in Keene v. Meese, 619 F. Supp. 1111 (E.D. Cal. 1985). The questions presented are (1) whether an individual desiring to exhibit films subject to the Foreign Agents Registration Act, 22 U.S.C. §611 et seq., has standing to challenge the Act's registration, labeling, and reporting requirements; and (2) if so, whether those requirements violate th First Amendment's right to freedom of speech.

ANTITRUST DIVISION

FOURTH CIRCUIT RULES ON INTERRELATIONSHIP OF FEDERAL RULES OF EVIDENCE 404(b) AND 608(b).

This case involved a six-count indictment of four defendants charged with bid rigging on a sewer construction project in violation of 15 U.S.C. §1 (the Sherman Act). At trial, in its case-in-chief, the government introduced evidence of one of the

defendant's similar acts of misconduct on other construction projects under Federal Rules of Evidence 404(b). On cross-examination, the defendant was asked if he had rigged bids on yet another project. The defendant denied the allegation, and the court allowed the government to present a rebuttal witness who testified that the defendant had in fact participated in bid rigging on the other project.

On appeal, the defendant argued that Federal Rules of Evidence 608(b) was violated when the court admitted the rebuttal evidence. The Fourth Circuit held that when evidence falls within the scope of both Rules 404(b) and 608(b), Rule 404(b) takes priority. The court cautioned, however, that the better practice is for the prosecutor to introduce all of this type of evidence in the case-in-chief, and stated that if the government attempts to introduce this evidence through cross-examination of the defendant or on rebuttal, the trial court should determine whether the evidence is cumulative or necessary to prove an essential element of the crime charged.

United States v. Smith Grading and Paving, Inc., 760 F.2d 527 (4th Cir.), cert. denied, 54 U.S.L.W. 3370 (Dec. 3, 1985). D. J. # 60-12-382.

Attorneys: Carl W. Mullis, III (Antitrust Division, Atlanta, Georgia) FTS 242-7100: John J. Powers (Antitrust Division) FTS 633-2414.

TENTH CIRCUIT UPHOLDS INDICTMENT OF DISSOLVED OKLAHOMA CORPORATIONS AND PARTNERSHIPS FOR CRIMES ALLEGEDLY COMMITTED PRIOR TO DISSOLUTION.

A grand jury in the Western District of Oklahoma returned an indictment against a corporation and a partnership organized under the laws of Oklahoma, charging violations of the Sherman Act (15 U.S.C. §1), the mail fraud statute (18 U.S.C. §1341) and the false statements statute (18 U.S.C. §1001). Finding that Oklahoma law required abatement of criminal prosecutions commenced after dissolution of a corporation or a partnership, the district court dismissed the indictment.

The Tenth Circuit reversed, adopting the government's position that Melrose Distillers v. United States, 359 U.S. 271 (1959), as applied to the Oklahoma corporation law, continues the existence of Oklahoma corporations and partnerships for the purpose of prosecution for crimes committed prior to dissolution. In so holding, the court recognized, as the government had urged, that Melrose implicitly overruled the Tenth Circuit's decision in United States v. Safeway Stores, Inc., 140 F.2d 834 (10th Cir. 1944), on which the district court had relied to dismiss the

indictment and that, in accord with Melrose, the Oklahoma statute implied sufficient vitality to corporate life following dissolution to subject the corporation to criminal prosecution. The court also found that the Oklahoma law under which the partnership was formed continued the partnership's existence for purposes of criminal indictment. Finally, because the court held that the motivation underlying dissolution of the corporation and partnership was not determinative of the survival of criminal prosecutions against dissolved corporations, the defendants' request to remand for hearing on whether their decision to dissolve was made in good faith was mooted.

United States v. Mobile Materials, Inc. and Mobile Materials Company, ___ F.2d ___, Nos. 84-2582 and 84-2583 (10th Cir. Nov. 15, 1985). D. J. # 60-206-292.

Attorneys: John J. Powers (Antitrust Division) FTS 633-2414; Alan A. Pason (Antitrust Division, Dallas, Texas) FTS 729-8051.

CIVIL DIVISION

D.C. CIRCUIT HOLDS THAT HHS RULES GOVERNING THE METHOD OF REIMBURSING DIALYSIS FACILITIES ARE "INTERPRETATIVE" AND THUS EXEMPT FROM NOTICE AND COMMENT REQUIREMENTS.

This challenge to the Secretary's administration of Part B of the Medicare Act stemmed from the Secretary's revision of billing instructions for reimbursing dialysis services. The Secretary admittedly did not publish the revised reimbursement rule for notice and comment, but argued that the revision was an interpretative rule under 5 U.S.C. §553(b)(A) and thus exempt from notice and comment requirements of the APA. She also asserted that judicial review over that revision was precluded under the Supreme Court's decisions in United States v. Erika, Inc., 456 U.S. 201 (1982), and in Heckler v. Ringer, 104 S. Ct. 2013 (1984). Despite Ringer, the district court exercised jurisdiction over the claim, ruling that while Congress had foreclosed judicial review of claim disputes under Part B of the Medicare Program, it had not precluded review of APA challenges to the Secretary's administration of the Part B Program. On the merits, the district court held that the reimbursement rule was "interpretative" in that it merely implemented the Secretary's overall statutory responsibility to determine the reasonable charge for basic dialysis services.

The court of appeals has affirmed on the merits, ducking the jurisdictional issue which the Supreme Court has now agreed to revisit in Michigan Academy of Family Physicians v. Blue Cross and Blue Shield, No. 85-225.

Bio-Medical Applications of Providence, Inc. v. Heckler, ___ F.2d ___, No. 84-5802 (D.C. Cir. Nov. 13, 1985). D. J. # 137-10-296.

Attorneys: Anthony J. Steinmeyer (Civil Division) FTS 633-3388; Harold J. Krent (Civil Division) FTS 633-3159.

D.C. CIRCUIT DISMISSES AS MOOT GOVERNMENT CONTRACTOR'S REVERSE-FOIA ACTION AGAINST LABOR DEPARTMENT WITH INSTRUCTIONS TO DISTRICT COURT TO VACATE INJUNCTION AGAINST AGENCY.

In a reverse-Freedom of Information Act (FOIA) action brought in 1974, Gulf sought to enjoin the Department of Labor (DOL) from disclosing a 1973 affirmative action plan for its Houston headquarters that the Houston Chapter of the National Organization for Women (NOW) had requested under the FOIA. Gulf asserted that this record, which DOL had obtained in an affirmative action compliance review of Gulf as a government contractor, was exempt from disclosure under the FOIA and that therefore, the Trade Secrets Act prohibited its disclosure. After holding proceedings in abeyance pending the issuance of the Supreme Court's decision in Chrysler Corp. v. Brown, in 1977 the district court issued its decision in Gulf's favor. It enjoined DOL from disclosing the particular record requested by Houston NOW or any other records substantially similar to it. The government appealed and asked the D.C. Circuit to stay the appeal pending its disposition of National Organization for Women v. Social Security Administration. After the court's issuance of that decision in 1984, we ascertained that Houston-NOW no longer sought the record at issue. Therefore, we moved to dismiss the appeal as moot with directions that the district court vacate its order under Munsingwear. A motions panel granted our motion as to the one 1973 record but denied the motion as to "substantially similar" records. On appeal, we urged dismissal on the grounds that what remained of Gulf's original grievance, the disclosibility of records like the one DOL had proposed to release, was not ripe for review, and that Gulf lacked standing to sue under the APA or the Trade Secrets Act. On the merits, we contended that the district court's injunction was overbroad.

On appeal, the D.C. Circuit dismissed the appeal with instructions that the district court vacate its injunction. First, it held that the entire case was moot, not just the portion held moot by the motions panel. It also concluded that whatever generalized claims Gulf still had were not ripe for review. Finally, it held that the district court's injunction was not carefully tailored to remedy the harm shown and was overbroad.

Gulf Oil Corp. v. Brock, ___ F.2d ___, No. 80-1127 (D.C. Cir. Dec. 13, 1985). D. J. # 145-10-432.

Attorneys: Leonard Schaitman (Civil Division) FTS 633-3441; Peter R. Maier (Civil Division) FTS 633-4052; Douglas N. Letter (Civil Division) FTS 633-3427.

SEVENTH CIRCUIT JOINS SIXTH AND NINTH CIRCUITS IN UPHOLDING DOL's INTERPRETATION OF THE SOCIAL SECURITY PENSION OFFSET REQUIREMENT UNDER THE FEDERAL UNEMPLOYMENT TAX ACT.

In 1976, Congress amended the Federal Unemployment Tax Act (FUTA) by requiring states to offset all pension income from unemployment benefits. In 1980, Congress relaxed this requirement by making it applicable only to pensions under a "plan . . . contributed to" by the unemployment claimant's last employer. The Department of Labor (DOL), which administers the FUTA requirements for state unemployment laws, interpreted the 1980 language as applying to a claimant's Social Security pension if his last employer contributes to Social Security by paying FICA taxes. DOL's interpretation has been followed by state unemployment agencies in interpreting their implementing laws. Various classes of Social Security pensioners in California, Kentucky, Indiana and Colorado, who had taken post-retirement jobs and then been laid off, brought actions challenging that interpretation. They relied on the legislative history of the 1980 amendment, arguing that Social Security pensions should not be offset unless the unemployment claimant had become eligible for his pension while working for his last employer. Three federal district courts agreed with that contention, one disagreed, and appeals were taken to the Ninth, Sixth, Seventh and Tenth Circuits, respectively. The Ninth and Sixth Circuits upheld the DOL interpretation. The Seventh Circuit has now joined those Circuits. It concluded that while "the legislative history is ambiguous, the enacted language [is] plain" --requiring offset of Social Security pensions whenever the last employer is one which "contributes to" the Social Security "plan" by paying FICA taxes. The Tenth Circuit has yet to rule on the issue.

Peare v. McFarland, ____ F.2d ____, No. 84-1360 (7th Cir. Nov. 27, 1985). D. J. # 145-10-2226

Attorney: Michael Kimmel (Civil Division) FTS 633-5714.

SEVENTH CIRCUIT RECOGNIZES FOIA EXEMPTION 7(D) GIVES ABSOLUTE PROTECTION TO "CONFIDENTIAL SOURCES."

In this Freedom of Information Act case, the district court ordered EPA to release unsolicited letters received by that agency that contained allegations of illegal and improper activities in

connection with the funding of a construction project funded by EPA. Since the identity of the source was known, the issue in the case was release of the information supplied by the source. On our appeal, the Seventh Circuit has just unanimously reversed in a comprehensive opinion which analyzes FOIA Exemption 7(D), which affords absolute protection to "confidential sources" in investigatory files compiled for law enforcement purposes. The Seventh Circuit's opinion discusses a number of important legal issues which frequently arises in Exemption 7(D) cases, including the issue of the circumstances under which an implied promise of confidentiality is deemed proven when the source is unsolicited.

Brant Construction Co. v. United States Environmental Protection Agency, ___ F.2d ___, No. 84-2378, (7th Cir. Dec. 5, 1985). D. J. # 145-185-243.

Attorneys: Leonard Schaitman (Civil Division) FTS 633-3441; Margaret E. Clark (Civil Division) FTS 633-5431

EIGHTH CIRCUIT HOLDS THAT ATTORNEY'S FEES CAN BE AWARDED AGAINST THE GOVERNMENT UNDER 28 U.S.C. §2412(b) (Via 42 U.S.C. §1988) WHEN A PLAINTIFF COULD HAVE PREVAILED ON A FEE GENERATING CLAIM UNDER 42 U.S.C. §1988 HAD THE CLAIM BEEN RAISED.

This attorney's fee litigation arises out of plaintiffs' efforts to force HUD to pressure the Texarkana Public Housing Authority to integrate its housing projects more fully. The court of appeals held that HUD violated the Fifth Amendment and Title VIII of the Civil Rights Act by continuing to fund the Housing Authority even though aware of the Authority's discriminatory practices. The court did not reach the merits of plaintiffs' claim under Title VI, reasoning that there was no need in light of the Fifth Amendment ruling to reach the thorny statutory issues that would otherwise be raised.

The instant claim for attorney's fees under 28 U.S.C. §2412(b) and 28 U.S.C. §2412(d) followed. With respect to the Section 2412(b) claim, we argued that plaintiffs, while prevailing on the Fifth Amendment and Title VIII grounds, had not prevailed on any fee generating claim listed in Section 1988. Plaintiffs argued that they should be considered to have prevailed under Title VI and 42 U.S.C. §1981 and §1982, because they gained equivalent relief under the Fifth Amendment. While the district court ruled in our favor, the court of appeals has just reversed, adopting plaintiffs' theory. The court reasoned that even though plaintiffs had not pursued the fee generating statutory claims under 42 U.S.C. §§1981 & 1982, "the important thing is what relief was awarded on the facts and the law, not what relief was expressly requested by the pleadings." Because it would be

"unjust and inconsistent with the modern rules of pleading to deny fees" to plaintiffs when they had prevailed on the "identical" Fifth Amendment claim, the court awarded fees under 42 U.S.C. §1981 and 1982.

Clients' Council v. Pierce, ___F.2d___, No. 85-1523 (8th Cir. Dec. 5, 1985). D. J. # 145-17-3685.

Attorneys: William Kanter (Civil Division) FTS 633-1597; Harold J. Krent (Civil Division) FTS 633-3159

FEDERAL CIRCUIT SUSTAINS CONSTITUTIONALITY OF RETROACTIVE COLA ADJUSTMENT.

This suit, brought by the National Treasury Employees Union and the National Association of Retired Federal Employees, challenged certain provisions of the Civil Service Retirement Act that cut back on the cost-of-living adjustment (COLA) for federal employee pensions. These included a repeal of the provisions which added one percent to the consumer price index for COLA purposes and provided for a twice-yearly adjustment. Plaintiffs contended that upon retirement, federal employees acquire a vested right in the COLA formula then in effect, immune from subsequent legislative alteration. The court rejected this contention, relying on its recent decision in Zucker v. United States, 758 F.2d 637 (1985), cert. denied, 106 S. Ct. 129 (1985).

National Treasury Employees Union and National Association of Retired Federal Employees v. Horner, Director, Office of Personnel Management, ____F.2d ____, No. 85-1981 (Nov. 27, 1985). D. J. # 154-P85-631.

Attorneys: William Kanter (Civil Division) FTS 633-1597; Robert V. Zener (Civil Division) 633-4027.

UNITED STATES ATTORNEYS' OFFICES

EASTERN DISTRICT OF KENTUCKY

FEDERAL INMATE'S FTCA JUDGMENT AGAINST UNITED STATES SET ASIDE PURSUANT TO UNITED STATES V. DEMKO.

Plaintiff, a former federal inmate, filed combination Federal Tort Claims Act (FTCA) action against the United States and Bivens actions against 18 federal employees. The gravaman of the claims was a mixture of medical malpractice and administrative negligence

in work assignments, and medical malpractice in the lack of treatment of the exacerbation of previously existing injuries caused by work assignments while in prison. The proceedings resulted in the dismissal of all the Bivens claims. The district court empaneled an advisory jury which returned an FTCA verdict in favor of plaintiff in the amount of $500,000. The court entered Findings of Fact and Conclusions of Law and Judgment thereon. As said Findings and Conclusions made clear that the Judgment was predicated upon a work-related exacerbation of a pre-existing condition, the United States moved pursuant to Federal Rules of Civil Procedure 60(b) to set aside Judgment pursuant to jurisdictional grounds of the Inmate Compensation Act, 18 U.S.C. §4126 as interpreted by the Supreme Court in United States v. Demko, 385 U.S. 149 (1966). The district court concluded that the United States as sovereign, was not estopped from raising a jurisdictional claim post Judgment, that the facts fell within the parameters of Demko and interpreting cases, and that Demko required setting aside the Judgment and dismissal of the Complaint as 18 U.S.C. §4126 is an exclusive remedy and no action lies under FTCA.

Wooten v. United States, ____F. Supp. _____, Civil Action No. 83-18 (E.D. KY). D. J. # 157-30-279.

Attorneys: Charles L. Dause and Peter M. Davenport (Assistant United States Attorneys, Eastern District of Kentucky) FTS 355-2661.

DISTRICT OF SOUTH CAROLINA

FOURTH CIRCUIT AFFIRMS DISTRICT COURT'S RULING IN IMMIGRATION FRAUD CASE, VIOLATIONS OF 18 U.S.C. §371 and 8 U.S.C. §1324(a)(3)

Chung Yup Yum arranged for Bi Kung Lee, an illegal alien, to marry a United States citizen in exchange for $2,000 in cash, a paid honeymoon in Miami, and money for a divorce. The sole purpose of the marriage was to change the alien's status so he could obtain a Visa. After the wedding, the parties filed a Petition to Classify Status of Alien Relative for Issuance of an Immigrant Visa for Lee. However, the petition was denied because of inconsistencies in the couple's renditions of their life together.

On June 9, 1984, a jury found Yum guilty of conspiring with an unnamed woman to conceal Lee, and to present to INS documents containing false statements, in violation of 18 U.S.C. §371. Yum was also found guilty of concealing Lee in violation of 8 U.S.C. §1324(a)(3).

The Fourth Circuit affirmed. The court rejected the reasoning in United States v. Diogo, 320 F.2d 898 (2d Cir. 1963), which was followed in United States v. Lozano, 511 F.2d 1 (7th Cir. 1975), which held that if the alien was in fact validly married there was no false statement. Instead, the court held there was a concealment of material fact (i.e., the intended divorce after the Visa was obtained). The Fourth Circuit followed United States v. Rubenstein, 151 F.2d 915 (2d Cir. 1945) and Lutwak v. United States, 344 U.S. 604 (1953), which held the validity of a marriage is immaterial when the marriage is part of a conspiracy to defraud the United States.

United States v. Chung Yup Yum, ___F.2d___, 84-5292 (4th Cir. Nov. 7, 1985).

Attorney: Eric William Ruschky (Assistant United States Attorney, District of South Carolina) FTS 677-5125.

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 11(e)(6). Pleas. Plea Agreement Procedures. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

Federal Rules of Evidence, Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

Defendant moved to suppress incriminating statements that he admittedly made to an Assistant United States Attorney and a FBI agent at a meeting held on November 15, 1984. The attorney for defendant was also present at this meeting because defendant had refused to talk with an agent earlier without his attorney. Defendant was not told that any statements he made could be used against him nor was he tendered a proffer letter. The agent did not file the usual FBI report after the meeting and the parties agreed to discuss possible "deal" several days later. A follow-up meeting was held and later the Assistant mailed defense counsel a proposed plea bargain. The proposed agreement was neither formally rejected nor accepted by defendant. On April 2, 1985, an investigatory report regarding the November 15 meeting was filed by the agent and an indictment was issued against defendant. Defendant argued that his statements were made in the course of plea discussions and are therefore inadmissible at trial under Federal Rules of Criminal Procedure 11(e)(6) and Federal Rules of Evidence 410. The government opposed defendant's motion.

The district court stated that once defendant properly raised the issue, the government bears the burden of proving that the discussion was not a plea negotiation. The government's burden of

proof is by the preponderance of the evidence. The court applied the two-prong test initiated in United States v. Robertson, 582 F.2d 1356 (5th Cir. 1978) of whether the accused exhibited an actual subjective expectation to negotiate a plea at the time of the discussion, and whether the accused's expectation was reasonable given the totality of the objective circumstances. Applying the Robertson criteria, the court found defendant's in-court "account of his prior subjective mental impressions" credible because defendant had refused to speak to the government without his attorney and had his attorney present at the November 15 meeting. This evidenced a belief that he would benefit from this meeting and that his rights would be adequately protected. The court concluded that defendant's statements were inadmissible under Federal Rules of Criminal Procedure 11(e)(6) and Federal Rules of Evidence 410.

The court offered a warning that a government prosecutor would be well advised to state in writing at the outset of conversations that could arguably be categorized as plea discussions whether the government was prepared to negotiate and, if not, that statements of a defendant could be used as evidence against him.

(Motion granted.)

United States v. Washington, 614 F. Supp. 144 (D.C. Pa. June 21, 1985).

FEDERAL RULES OF EVIDENCE

Rule 410. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

See Rule 11(e)(6), Federal Rules of Criminal Procedure, this issue of the Bulletin for syllabus.

United States v. Washington, 614 F. Supp. 144 (D.C. Pa. June 21, 1985).

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

(As provided for in the amendment to the Federal Postjudgment Interest Statute, 28 U.S.C. §1961, effective October 1, 1982.)

Effective Date	Annual Rate	Effective Date	Annual Rate
10-01-82	10.41%	05-16-84	11.74%
10-29-82	9.29%	06-08-84	12.08%
11-25-82	9.07%	07-11-84	12.17%
12-24-82	8.75%	08-03-84	11.93%
01-21-83	8.65%	08-31-84	11.98%
02-18-83	8.99%	09-28-84	11.36%
03-18-83	9.16%	10-26-84	10.33%
04-15-83	8.98%	11-28-84	9.50%
05-13-83	8.72%	12-21-84	9.08%
06-10-83	9.59%	01-18-85	9.09%
07-08-83	10.25%	02-15-85	9.17%
08-10-83	10.74%	03-15-85	10.08%
09-02-83	10.58%	04-12-85	9.15%
09-30-83	9.98%	05-15-85	8.57%
11-02-83	9.86%	06-07-85	7.70%
11-24-83	9.93%	07-10-85	7.60%
12-23-83	10.10%	08-02-85	8.18%
01-20-84	9.87%	08-30-85	7.91%
02-17-84	10.11%	09-27-85	7.87%
03-16-84	10.60%	10-25-85	8.08%
04-13-84	10.81%	11-27-85	7.87%

NOTE: When computing interest at the daily rate, round (5/4) the product (i.e., the amount of interest computed) to the nearest whole cent.

FOREIGN TRAVEL
CHECKLIST OF REQUIREMENTS

The Executive Office and State Department need at least two week's notice prior to travel in a foreign country. To apply for a passport the following is necessary:

A. If you have an expired Official Government Passport (less than 8 yrs. old) or a Tourist Passport you should:

- fill out Form DSP 82 (Pink);
- Attach two recent 2" x 2" photographs; and
- Submit the above along with an expired Official Government Passport or your Tourist Passport (Tourist Passport will be returned) to the Executive Office.

If you don't have a previously issued passport, you should:

- fill out Form DSP-11* (Brown);
- Attach two recent 2" X 2" Photographs; and
- A certified copy of a birth certificate

*Have DSP-11 certified by acceptance agent prior to forwarding to EOUSA

B. Complete the State Department Questionnaire (See, Title 10-3.550).

(NOTE: Be sure to list the persons familiar with the case in the Department of Justice and in the State Department.)

C. Complete DOJ-501, Travel Request. The United States Attorney should sign the form as the requesting official. The Travel Request should include the following:

a) A general summary of the nature and stage of the case or investigation;
b) The amount of money involved in this particular matter, whether or not the case is precedence setting, and the defendant's previous record, if applicable;
c) A brief statement why the AUSA's presence is required, include reasons why a local agent could not perform the task.

SEND PACKAGE TO: Maria Fulginiti
Executive Office for United States Attorneys
Patrick Henry Building
601 D Street, RM. 9409
Washington, D.C. 20530

NOTE ON PASSPORTS:

All United States Attorneys and Assistant United States Attorneys should obtain an Official Government Passport when traveling in their official capacity to a foreign country.

NO PASSPORT IS NECESSARY FOR CANADA

DARK BLUE - TOURIST
BURGANDY - OFFICIAL
BLACK - DIPLOMATIC*

* United States Attorneys or Assistant United States Attorneys do not have diplomatic status. They are usually in a foreign country to obtain evidence, or to interview witnesses and have no function as a representative of the country.

JURIS DATA BASE LISTING
Revised December 1985

CASELAW

U.S. Supreme Court	178 U.S. (1900) - Slips
Federal Reporter, 2d Series	300 F.2d (1962) - Slips
Federal Supplement	332 F.Supp (1970) - Slips
Court of Claims	134 Ct. Cl. - 231 Ct. Cl. (1956 - February 1982)
Claims Court	1 Cl. Ct. (1982) - Slips
Federal Rules Decisions	73 F.R.D. (1976) - Slips
Court of Military Review	1 C.M.R. - 50 C.M.R. (1951-1975)
Military Justice Reporter	1 M.J.R. - Slips (1974 - Present)
Atlantic 2d Reporter	370 A.2d (1977) - Present (D.C. cases only)
Bankruptcy Reporter	1 B.R. (1979) - Slips

SHEPARD'S CITATIONS

United States Reports	1944 - Present
Supreme Court Reporter	1944 - Present
Lawyer's Edition (1st & 2d Series)	1944 - Present
Federal Reporter	1970 - Present
Federal Reporter Second Series	1970 - Present
Federal Supplement	1970 - Present
Federal Rules Decisions	1970 - Present
Court of Claims	1970 - Present
Court Martial Reports	1951 - Present
Military Justice Reporter	1975 - Present

STATLAW - STATUTORY LAW

Public Laws	93rd - 98th Congress (1-149 and 473)
United States Code	1982 Edition
Executive Orders	12/31/47 - 7/1/85
Civil Works Laws	Vols. 1-4, (1790 - 1966) and Selected Public Laws to September, 1983

* New JURIS File
** Major File Additions

STATLAW - STATUTORY LAW (Cont'd)

Comprehensive Crime Control Act of 1984	Pub. L. No. 98-473 (CCCA), Pub. L. No. 98-573 (Tariff Act), Pub. L. No. 98-596 (Fine Enforcement Act) and Criminal Division Handbook on the Comprehensive Crime Control Act of 1984

DIGEST - WEST HEADNOTES

Supreme Court Reporter	1961 - advance sheets
Federal Reporter, 2d Series	1960 - advance sheets
Federal Supplement	1960 - advance sheets
Federal Rules Decisions	1960 - advance sheets
Regional Reporters (State Cases)	1967 - advance sheets

TAX

U.S. Tax Court Decisions	Vols 1-66 (11/42 - 9/76)
U.S. Board of Tax Appeals Decisions	Vols 19 - 47 (2/30-11/42)
Enforcement Decisions	Tax Division's Summons Enforcement Decisions Current to 3/1/84
Tax Protesters	Tax Division Tax Protester Decision List

BRIEFS - DEPARTMENT OF JUSTICE BRIEFS

Office of the Solicitor General Briefs	Briefs since the 10/1982 Term
Civil Division Briefs	Selected Appellate Briefs (11/81 - Present)
Civil Division Trial Briefs	Selected Trial Briefs (1977 - Present)
Civil Rights Division Briefs	Selected Appellate Briefs (1/80 - Present)
Land and Natural Resources Division Briefs	Selected Appellate Briefs (12/83 - Present)
U.S. Attorneys' Offices Briefs	Selected Criminal Appellate Briefs (1980-Present)

MANUAL - UNITED STATES ATTCRNEYS' MANUAL

Titles 1-7 and 10	Latest Paragraph Text

WRKPRDT - DEPARTMENT OF JUSTICE WORK PRODUCTS

Criminal Division Monographs	Selected Monographs
Civil Division Monographs	Selected Monographs
Criminal Division Narcotics Newsletter	July 1979 - Present

LEGHIST - Legislative Histories of Federal Laws

Equal Access to Justice Act (EAJA) Legislative History

ADMIN - ADMINISTRATIVE LAW

Published Comptroller General Decisions	Vols. 1-63 (1921-Sept. 1984)
Unpublished Comptroller General Decisions	(1/5/51 - 9/28/84)
Opinions of the Attorney General	Vols. 1-43 (1791-1980)
O.L.C. Memorandums	Vols. 1-3 (1977-1979)
Board of Contract Appeals	Vols. 56-2 to 85-2 (7/56-4/85)
** Federal Labor Relations Authority	Vols. 1-17 (1/79-3/85)
Decisions & Reports on Rulings of the Asst. Sec. of Labor for Labor Management Relations	1 A/SLMR - 8 A/SLMR (1/73-12/78)
Federal Labor Relations Council	Vols. 1-6 (1/70-12/78)
Rulings on Requests of the Asst. Sec. of Labor for Labor Management Relations	Volume 1 (2/70-6/75)
HUD Administrative Law Decisions	Selected Decisions
** Merit Systems Protection Board Decisions	(2/79 - present)
Board of Immigration Appeals Decisions	Vols. 1 (1940)-18 (1984) and Slips

REGS - FEDERAL REGULATIONS

Code of Federal Regulations	1984 Edition, Titles 5, 29-34, 36, 38-50 1985 Edition, Titles 1-4, 6-28, 35, 37
Unified Agenda or Federal Regulations	October, 1985 Edition

TREATIES

Bevans: Treaties and Other International Agreements of the United States	Vols. 1-12 (1776-1949)
** United States Treaties and Other International Agreements	Vols. 1-33 (1/50 - 5/83)
Department of Defense Unpublished International Agreements	(6/47 - 1/84)

FOIA - FREEDOM OF INFORMATION ACT

FOIA Update Newsletter	Vol. 1, No. 1 - Vol. 6, No. 3 (Fall 1979 - Summer 1985)
FOIA Short Guide	FOIA Case List Publication (September 1985 Edition)

FORENS - Mid-Atlantic Association of Forensic Scientists Newsletter

Scientific Sleuthing Newsletter	July, 1976 - Spring, 1985

INDLAW - INDIAN LAW

Opinions of the Solicitor (Interior)	Vols. 1 and 2 (1917 - 1974)
Ratified Treaties	1778 - 1880
Unratified Treaties	1801 - 1868
Presidential Proclamations	1879 - 1968
Executive Orders and Other Orders Pertaining to Indians	1871 - 1971

REFERENZ - TRAINING AIDS FOR JURIS USERS

JURIS Reference Manual, Parts I - IV	November 1984 Edition

LISTING OF ALL BLUESHEETS IN EFFECT
JANUARY 3, 1986

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
9-2.133*	TITLE 9	4/09/84	Policy Limitations on Institution of Proceedings, Consultation Prior to Institution of Criminal Charges
9-2.142(1)(c)(2)(c)*	TITLE 9	10/26/84	Dual and Successive Federal Prosecution Policy
9-2.144*	TITLE 9	10/26/84	Interstate Agreement on Detainers
9-2.147*	TITLE 9	10/26/84	Extradition and Deportation
9-2.149*	TITLE 9	10/26/84	Revocation and Naturalization
9-2.160	TITLE 9	7/18/85	Policy with Regard to Issuance of Subpoenas to Attorneys for Information Relating to the Representation of Clients
9-2.172*	TITLE 9	10/26/84	Appearance Bond Forfeiture Judge
9-2.173*	TITLE 9	10/26/84	Arrest of Foreign Nationals
9-6.400	TITLE 9	11/06/85	Pretrial Detention Hearing Reporting Requirements
9-7.1000*	TITLE 9	5/02/84	Video Surveillance
9-8.250*	TITLE 9	8/16/85	Policy Concerning Application of Youth Corrections Act to Offenses Committed before Oct. 12, 1984
9-18.280*	TITLE 9	8/09/85	Policy Concerning Application of Insanity Defense Reform Act of 1984 Offenses. Committed Before Date of Enactment

* Approved by Advisory Committee, being permanently incorporated.
** In printing.

LISTING OF ALL BLUESHEETS IN EFFECT
JANUARY 3, 1986

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
9-21.340 to 9-21.350	TITLE 9	3/12/84	Psychological/Vocational Testing; Polygraph Examinations for Prisoner-Witness Candidates
9-27.510*	TITLE 9	5/25/84	Opposing Offers to Plead Nolo Contendere
9-34.600	TITLE 9	8/16/85	Policies Concerning the New Sentencing Scheme Scheduled to Take Effect in November 1986
9-38.000*	TITLE 9	4/06/84	Forfeitures
9-40.400*	TITLE 9	7/15/85	Policy Concerning Prosecution Under New Bank Bribery Statute (18 U.S.C. §215)
9-42.530*	TITLE 9	10/9/84	Dept. of Defense Memorandum of Understanding
9-48.120*	TITLE 9	3/07/85	Computer Fraud-Reporting Requirements
9-49.150; 9-49.160*	TITLE 9	3/22/85	18 U.S.C. §1029-Reporting Requirements; Fraudulent Use of Credit Cards and Debit Instruments-Prosecutions Under 18 U.S.C. §1029 Statutes in Title 15
9-60.134; 9-60.135*	TITLE 9	12/14/84	Allegations of "Mental Kidnapping" or "Brain-washing" by Religious Cults; "Deprogramming" of Religious Sect Members
9-60.291; 9-60.292	TITLE 9	8/16/85	Interception of Radio Communications: Unauthorized Reception of Cable Service
9-60.400*	TITLE 9	12/31/84	Criminal Sanctions Against Illegal Electronic Surveillance - The Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. §1809

LISTING OF ALL BLUESHEETS IN EFFECT
JANUARY 3, 1986

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
9-60.730*	TITLE 9	8/16/85	Prosecutive Policy
9-60.830*	TITLE 9	2/20/85	Special Forfeiture of Collateral Profits of Crime ("Son of Sam")
9-65.940*	TITLE 9	3/28/85	Policy Concerning Prosecution - 18 U.S.C §115
9-90.330*	TITLE 9	5/06/85	Computer Espionage
9-90.600*	TITLE 9	5/06/85	Registration
9-103.130; 9-103.140*	TITLE 9	3/28/85	Controlled Substances Registrant Protection Act of 1984-Investigative & Prosecutive Guidelines; Criminal Division Approval
9-103.230*	TITLE 9	3/28/85	Policy Consideration -- Aviation Drug Trafficking Control Act
9-110.800	TITLE 9	9/20/85	Murder-For-Hire and Violent Crimes in Aid of Racketeering Activity
9-111.000	TITLE 9	9/18/85	Policy with Regard to Forfeiture of Assets Which Have Been Transferred to Attorneys As Fees For Legal Services
9-131.030*	TITLE 9	4/09/84	Consultation Prior to Prosecution
9-131.110*	TITLE 9	4/09/84	Hobbs Act Robbery
9-134.010*	TITLE 9	2/20/85	Investigative Jurisdiction: 18 U.S.C. §1954
9-138.030*	TITLE 9	3/28/85	Consultation Prior to Prosecution
10-2.186	TITLE 10	9/27/85	Grand Jury Reporters
10-3.560*	TITLE 10	12/13/84	Relocation

LISTING OF ALL BLUESHEETS IN EFFECT
JANUARY 3, 1986

AFFECTS USAM	TITLE NO.	DATE	SUBJECT
10-6.213	TITLE 10	11/22/85	Reporting of Immediate Declinations of Civil Referrals

UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500.

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 1	(Transmittals A2 through A10 have been superseded.)			
	A11	2/22/84	2/10/84	Complete revision of Ch. 1, 2
	A12	3/19/84	2/17/84	Complete revision of Ch. 4
	A13	3/22/84	3/9/84	Complete revision of Ch. 8
	A14	3/23/84	3/9 & 3/16/84	Complete revision of Ch. 7, 9
	A15	3/26/84	3/16/84	Complete revision of Ch. 10
	A16	8/31/84	3/02/84	Complete revision of Ch. 5
	A17	3/26/84	3/26/84	Complete revision of Ch. 6
	A18	3/27/84	3/23/84	Complete revision of Ch. 11, 13, 14, 15
	A19	3/29/84	3/23/84	Complete revision of Ch. 12
	A20	3/30/84	3/23/84	Index to Title 1, Table of Contents to Title 1
	A21	4/17/84	3/23/84	Complete revision of Ch. 3
	A22	5/22/84	5/22/84	Revision of Ch. 1-6.200
	AAA1	5/14/84		Form AAA-1

*Transmittal is currently being printed.

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 1	B1	7/01/85	8/31/85	Revision to Ch. 1-12.000
	B2	8/31/85	7/01/85	Revisions to Ch. 11
TITLE 2	(Transmittals A2 through A4 have been superseded.)			
	A5	2/10/84	1/27/84	Complete revision of Title 2-replaces all previous transmittals
	A11	3/30/84	1/27/84	Summary Table of Contents to Title 2
	AAA2	5/14/84		Form AAA-2
TITLE 3	(Transmittal A2 has been superseded.)			
	A3	10/11/83	8/4/83	Complete revision of Title 3-replaces all previous transmittals
	AAA3	5/14/84		Form AAA-3
TITLE 4	(Transmittals A2 through A6 have been superseded.)			
	A7	4/16/84	3/26/84	Complete revision of Ch. 7, 8, 12
	A8	4/16/84	3/28/84	Complete revision of Ch. 2, 14, 15
	A9	4/23/84	3/28/84	Complete revision of Ch. 3
	A10	4/16/84	3/28/84	Complete revision of Ch. 10
	A11	4/30/84	3/28/84	Complete revision of Ch. 1, 9, Index to Title 4
	A12	4/21/84	3/28/84	Complete revision of Ch. 6
	A13	4/30/84	3/28/84	Complete revision of Ch. 4

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	Contents
TITLE 4	A14	4/10/84	3/28/84	Complete revision of Ch. 13
	A15	3/28/84	3/28/84	Complete revision of Ch. 5
	A16	4/23/84	3/28/84	Complete revision of Ch. 11
	AAA4	5/14/84		Form AAA-4
	B1	11/05/85	8/01/85	Revisions to Chapters 1-8, and 11-15
TITLE 5	(Transmittal A2 has been superseded.)			
	A3	3/22/84	3/5/84	Complete revision of Ch. 1, 2, 3(was 2A)
	A4	3/28/84	3/12/84	Complete revision of Ch. 12 (was 9C)
	A4	undated	3/19/84	Complete revision of Ch. 5 (was Ch. 4), 6, 8
	A5	3/28/84	3/20/84	Complete revision of Ch. 9, 11 (was 9B)
	A6	3/28/84	3/22/84	Complete revision of Ch. 7
	A7	3/30/84	3/20/84	Complete revision of Ch. 10 (was 9A)
	A8	4/3/84	3/22 & 3/26/84	Complete revision of Ch. 13, 14, 15, Table of Contents to Title 5
	A9	12/06/84	11/01/84	Revisions to Chapter 1
	A11	4/17/84	3/28/84	Complete revision of Ch. 4 (was Ch. 3)
	A12	4/30/84	3/28/84	Index to Title 5
	AAA5	5/14/84		Form AAA-5
	B1	6/03/85	5/01/85	Revisions to Ch. 1 and Ch. 4

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 6	A2	3/23/84	3/2/84	Complete revision of Title 6-replaces all prior transmittals
	A3	12/19/84	12/14/84	Revision to Ch. 4 and Index
	AAA6	5/14/84		Form AAA-6
TITLE 7	(Transmittals A2 and A3 have been superseded.)			
	A4	1/6/84	11/22/83	Complete revision to Title 7-replaces all prior transmittals
	A12	3/3/84	12/22/83	Summary Table of Contents to Title 7
	AAA7	5/14/84		Form AAA-7
TITLE 8	A1	4/2/84	2/15/84	Ch. 1, 2, Index to Title 8
	A2	6/21/82	4/30/82	Complete revision to Title 8
	A12	3/30/84	2/15/84	Summary Table of Contents to Title 8
	AAA8	5/14/84		Form AAA-8
TITLE 9	(Transmittals A5 through A12, A14, A47, A49 A50, A56 and A61 have been superseded.)			
	A13	1/26/84	1/11/84	Complete revision of Ch. 132, 133
	A14	2/10/84	1/27/84	Revisions to Ch. 1 (Superseded by A78)
	A15	2/1/84	1/27/84	Complete revision of Ch. 8
	A16	3/23/84	2/8/84	Complete revision of Ch. 135, 136

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 9	A17	2/10/84	2/2/84	Complete revision of Ch. 39
	A18	2/3/84	2/3/84	Complete revision of Ch. 40
	A19	3/26/84	2/24/84	Complete revision of Ch. 21
	A20	3/23/84	2/8/84	Complete revision of Ch. 137, Ch. 138
	A21	3/19/84	2/13/84	Complete revision of Ch. 34
	A22	3/30/84	2/01/84	Complete revision of Ch. 14
	A23	8/31/84	2/16/84	Revisions to Ch. 2
	A24	3/23/84	2/28/84	Complete revision of Ch. 65
	A25	3/26/84	3/7/84	Complete revision of Ch. 130
	A26	3/26/84	2/8/84	Complete revision of Ch. 44
	A27	3/26/84	3/9/84	Complete revision of Ch. 90
	A28	3/29/84	3/9/84	Complete revision of Ch. 101
	A29	3/26/84	3/9/84	Complete revision of Ch. 121
	A30	3/26/84	3/19/84	Complete revision of Ch. 9
	A31	3/26/84	3/16/84	Complete revision of Ch. 78
	A32	3/29/84	3/12/84	Complete revision of Ch. 69
	A33	3/29/84	3/9/84	Complete revision of Ch. 102

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 9	A34	3/26/84	3/14/84	Complete revision of Ch. 72
	A35	3/26/84	2/6/84	Complete revision of Ch. 37
	A36	3/26/84	2/6/84	Complete revision of Ch. 41
	A37	4/6/84	2/8/84	Complete revision of Ch. 139
	A38	3/29/84	2/28/84	Complete revision of Ch. 47
	A39	3/30/84	3/16/84	Complete revision of Ch. 104
	A40	4/6/84	3/9/84	Complete revision of Ch. 100
	A41	4/6/84	3/9/84	Complete revision of Ch. 110
	A42	3/29/84	3/14/84	Complete revision of Ch. 64
	A43	4/6/84	3/14/84	Complete revision of Ch. 120
	A44	4/5/84	3/21/84	Complete revision of Ch. 122
	A45	4/6/84	3/23/84	Complete revision of Ch. 16
	A46	2/30/84	2/16/84	Complete revision of Ch. 43
	A47	4/16/84	3/28/84	Revisions to Ch. 7 (Superseded by A63)
	A48	4/16/84	3/28/84	Complete revision of Ch. 10
	A49	4/16/84	3/28/84	Revisions to Ch. 63 (Superseded by A74)

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 9	A50	4/16/84	3/28/84	Revisions to Ch. 66 (Superseded by A60)
	A51	4/6/84	3/28/84	Complete revision of Ch. 76, deletion of Ch. 77
	A52	4/16/84	3/30/84	Complete revision of Ch. 85
	A53	6/6/84	3/28/84	Revisions to Ch. 4
	A54	7/25/84	6/15/84	Complete revision of Ch. 11
	A55	4/23/84	4/6/84	Complete revision of Ch. 134
	A56	4/30/84	3/28/84	Revisions to Ch. 42 (Superseded by A87)
	A57	4/16/84	3/28/84	Complete revision of Ch. 60, 75
	A58	4/23/84	4/19/84	Summary Table of Contents of Title 9
	A59	4/30/84	4/16/84	Entire Index to Title 9
	A60	5/03/84	5/03/84	Complete revision of Ch. 66 (Supersedes A50)
	A61	5/03/84	4/30/84	Revisions to Ch. 1, section .103 (Superseded by A78)
	A62	12/31/84	12/28/84	Revisions to Ch. 123
	A63	5/11/84	5/9/84	Complete revision to Ch. 7 (Supersedes A47)
	A64	5/11/84	5/11/84	Revision to Ch. 64, section .400-700
	A65	5/17/84	5/17/84	Revisions to Ch. 120
	A66	5/10/84	5/8/84	Complete revision to Ch. 131

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 9	A67	5/11/84	5/09/84	Revisions to Ch. 121, section .600
	A68	5/28/84	5/08/84	Revisions to Ch. 104
	A69	5/09/84	5/07/84	Revisions to Ch. 21, section .600
	A70	5/17/84	5/16/84	Revisions to Ch. 43, section .710
	A71	5/21/84	5/21/84	Complete revision of Ch. 20
	A72	5/25/84	5/23/84	Complete revision of Ch. 61
	A73	6/18/84	6/6/84	Complete revision of Ch. 17
	A74	6/18/84	6/7/84	Complete revision of Ch. 63 (Supersedes A49)
	A75	6/26/84	6/15/84	Complete revision of Ch. 27
	A76	6/26/84	6/15/84	Complete revision of Ch. 71
	A77	7/27/84	7/25/84	Complete revision of Ch. 6
	A78	9/10/84	8/31/84	Complete revision of Ch. 1 (Supersedes A14 and A61)
	A79	8/02/84	7/31/84	Complete revision of Ch. 18
	A80	8/03/84	8/03/84	Complete revision of Ch. 79
	A81	8/06/84	7/31/84	Revisions to Ch. 7
	A82	8/02/84	7/31/84	Revisions to Ch. 75
	A83	8/02/84	7/31/84	Revisions to Ch. 90

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 9	A84	9/10/84	9/7/84	Complete revision of Ch. 2
	A85	7/25/84	2/17/84	Revisions to Ch. 136
	A86	8/02/84	7/31/84	Revisions to Ch. 60
	A87	11/14/84	11/09/84	Revisions to Ch. 42 (Supersedes A56)
	A88	8/31/84	8/24/84	Complete revision of Ch. 12
	A89	12/31/84	12/31/84	Complete revision of Ch. 4
	A90	10/10/84	10/01/84	Complete revision of Ch. 73
	A91	12/12/84	11/23/84	Revisions to Ch. 70
	A92	12/14/84	11/09/84	Revisions to Ch. 75
	A93	12/31/84	12/06/84	Revisions to Ch. 7
	A94	12/20/84	12/14/84	Correction to Ch. 27
	AAA9	5/14/84		Form AAA-9
	B1	3/15/85	01/31/85	Revisions to Ch. 60
	B2	3/29/85	01/31/85	Revisions to Ch. 61
	B3	3/29/85	01/31/85	Revisions to Ch. 71
	B4	6/24/85	4/01/85	Revisions to Ch. 63
	B5	6/24/85	4/04/85	Revisions to Ch. 11
	B6	6/27/85	4/01/85	Revisions to Ch. 139
	B7	6/27/85	5/01/85	Revisions to Ch. 12
	B8	7/01/85	4/01/85	Revision to Ch. 4
	B9	7/31/85	7/31/85	Revision to Ch. 130
	B15	10/21/85	7/01/85	Revision to Ch. 75

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 9	B16	10/22/85	7/01/85	Revision to Ch. 64
	B17	10/21/85	8/30/85	Revision to Ch. 136
	B18	10/21/85	8/01/85	Revision to Ch. 63
	B19	11/05/85	8/01/85	Revision to Ch. 133
	B20	11/01/85	8/30/85	Revision to Ch. 134
	B21	11/05/85	8/01/85	Revision to Ch. 11
	B23	11/20/85	11/05/85	Revision to Ch. 71
TITLE 10	(Transmittals A2 through A7 have been superseded.)			
	A8	4/5/84	3/24/84	Complete revision of Ch. 1
	A9	4/6/84	3/20/84	Complete revision of Ch. 7
	A10	4/13/84	3/20/84	Complete revision of Ch. 5
	A11	3/29/84	3/24/84	Complete revision of Ch. 6
	A12	4/3/84	3/24/84	Complete revision of Ch. 8
	A13	9/4/84	3/26/84	Complete revision of Ch. 10
	A14	4/23/84	3/28/84	Complete revision of Ch. 4
	A15	4/17/84	3/28/84	Complete revision of Ch. 3, 9
	A16	5/4/84	3/28/84	Index and Appendix to Title 10
	A17	3/30/84	3/28/84	Summary Table of Contents to Title 10
	A18	5/4/84	4/13/84	Complete revision to Ch. 2

TRANSMITTAL AFFECTING TITLE	NO.	DATE OF TRANSMITTAL	DATE OF TEXT	CONTENTS
TITLE 10	A19	5/02/84	5/01/84	Revisions to Ch. 4
	A20	8/31/84	5/24/84 & 7/31/84	Revisions to Ch. 2
	A21	6/6/84	5/1/84	Corrected TOC, Ch. 4 and pages 23, 24
	A22	7/30/84	7/27/84	Revision to Ch. 2
	A23	8/02/84	7/31/84	Revision to Ch. 2
	A24	11/09/84	10/19/84	Revision to Ch. 2
	A25	11/09/84	10/19/84	Revision to Ch. 2
	A26	11/28/84	11/28/84	Revision to Ch. 2
	A27	12/07/84	11/01/84	Revision to Ch. 2
	AAA10	5/14/84		Form AAA-10
	B1	3/15/85	1/31/85	Revision to Ch. 2
	B2	5/31/85	5/01/85	Revision to Ch. 2
	B3	6/27/85	4/01/85	Revision to Ch. 2
	B4	7/23/85	4/01/85	Revision to Ch. 4
	B7	7/31/85	5/01/85	Revision to Ch. 2 Appendix--Form Index
	B8	11/01/85	8/16/85	Revisions to Ch. 2 and Ch. 8
	B9	11/01/85	8/16/85	Revision to Ch. 2
	B1[illegible]	11/29/85	8/16/85	Revision to Ch. 2
TITLE 1-10	A1	4/25/84	4/20/84	Index to USAM

If you have any questions regarding the above, please contact Judy Beeman at FTS 673-6348.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
TELETYPES TO ALL UNITED STATES ATTORNEYS

12-06-85 From Ronald J. Vincoli, Assistant Director, Personnel Management Staff, re: "Employee Assistance Program Referrals."

12-10-85 From C. Madison Brewer, Director, Office of Management Information Systems and Support, re: "Penalty Assessments Levied Against Criminal Defendants Who Are Deported."

12-12-85 From Susan A. Nellor, Director, Office of Legal Services, re: "Use of Military JAG Attorneys to Prosecute Non-Petty Offenses."

12-17-85 From William P. Tyson, Director, Executive Office for United States Attorneys, re: "Attorney General's Advisory Committee."

12-18-85 From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Director, Office of Legal Services, re: "Unauthorized Survey of United States Attorneys."

12-18-85 From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Director, Office of Legal Services, re: "Forfeiture Manual."

12-20-85 From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Director, Office of Legal Services, re: "Storage and Protection of Evidence."

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William P. Tyson, Director

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Editor-in-Chief: Jason P. Green FTS 633-4024
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VOL. 34, NO. 2 THIRTY-THIRD YEAR JANUARY 31, 1986

Please send change of address to Editor, United States Attorneys' Bulletin, Room 1629, Main Justice Building, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530.

COMMENDATIONS

Assistant United States Attorney JAMES R. ARNOLD, Central District of California, was commended by Lieutenant General Forrest S. McCartney, Commander, United States Air Force, for his outstanding litigation support of the Air Force Space Division's efforts to build essential family housing in the White Point area of Palos Verdes, California.

Assistant United States Attorney MARK EDWARD ASPEY, District of Arizona, was commended by Mr. Howard A. Tokheim, Postal Inspector-in-Charge, United States Postal Service, Phoenix, Arizona, for his successful prosecution of United States v. McCaffrey.

Assistant United States Attorney EDMUND A. BOOTH, JR., Southern District of Georgia, was commended by Mr. L.C. Fowler, District Counsel, Corps of Engineers, Department of the Army, for his successful resolution of Gold Mech., Inc. v. Delta Industrial Contractors, Inc.

Assistant United States Attorneys ROBERT C. BRICHLER and WILLIAM E. HUNT, Southern District of Ohio, were commended by Mr. William R. Britt, Chief, Criminal Investigation Division, Internal Revenue Service, for their continuing contributions and support to the Criminal Investigation Division and to the overall mission of the Service.

Assistant United States Attorney PATRICK R.S. BUPARA, Northern District of California, was commended by Mr. Richard W. Held, Special Agent-in-Charge, Federal Bureau of Investigation, for his excellent representation of two agents in Coleman v. United States and Parris v. United States.

Assistant United States Attorneys K. TATE CHAMBERS, GREGORY K. HARRIS, and DAVID E. RISLEY, Central District of Illinois, were commended by Mr. L.W. Wiggs, Postal Inspector-in-Charge, United States Postal Service, St. Louis, Missouri, for their successful prosecution of United States v. Lone.

Assistant United States Attorney ROBERT E.L. EATON, JR., District of Columbia, was commended by Mr. Joseph R. Davis, Assistant Director, Legal Counsel Division, Federal Bureau of Investigation, for his dedication and expertise which brought a successful resolution to a major Freedom of Information Act lawsuit.

Assistant United States Attorney WILLIAM T. GRIMMER, Northern District of Indiana, was commended by Mr. Paul A. Adams, Inspector General, Department of Housing and Urban Development, for his successful investigation and prosecution of several rental subsidy fraud cases in South Bend, Indiana.

Assistant United States Attorney MICHAEL A. JOHNS and First Assistant United States Attorney VIRGINIA A. MATHIS, District of Arizona, were commended by Mr. Joseph R. Davis, Assistant Director, Legal Counsel Division, Federal Bureau of Investigation, for their professionalism and spirit of cooperation displayed during the investigation into the shooting death of an FBI agent.

Assistant United States Attorney and Coordinator, Organized Crime and Drug Enforcement Task Force, JAMES A. LASSART, Northern District of California, was commended by Mr. Joseph E. Krueger, Special Agent-in-Charge, Drug Enforcement Administration, for his lecture on search warrants presented to Special Agents of the Drug Enforcement Administration, San Francisco, California.

Assistant United States Attorney STEPHEN J. LICCIONE, Eastern District of Wisconsin, was commended by Mr. Donald J. Goode, Vice President, Human Resources Department, Security Savings and Loan, for his excellent case preparation and professionalism in the successful prosecution of United States v. Qualls.

Assistant United States Attorney EDITH S. MARSHALL, District of Columbia, was commended by Mr. Lewis D. Junior, American Consul General, Rotterdam, The Netherlands, for her intelligence, patience and devotion to duty as demonstrated during the trial of Thomas v. Shultz.

Assistant United States Attorney GEORGE D. NIESPOLO, Northern District of California, was commended by Mr. Frank J. Marine, Special Attorney, Honolulu Field Office, Organized Crime and Racketeering Section, Criminal Division, Department of Justice, for his assistance in the successful prosecution of Hawaii gangster defendants in United States v. Madamba.

Assistant United States Attorney JOHN P. PANNETON, Eastern District of California, was commended by Assistant Attorney General Stephen S. Trott, Criminal Division, Department of Justice, for his excellent contributions as planner of and lecturer at the Economic Crime Enforcement Conference in San Diego, California.

Assistant United States Attorneys L. LELAND SMITH and MARK D. STUAAN, Central District of Illinois, were commended by Mr. L.W. Wiggs, Postal Inspector-in-Charge, United States Postal Service, St. Louis, Missouri, for their successful prosecution of a very complex million dollar fraud scheme.

Assistant United States Attorney R. JEFFREY WAGNER, Eastern District of Wisconsin, was commended by Mr. Elliott E. Lieb, Chief of the Milwaukee Office, Criminal Investigation Division, Internal Revenue Service, for his excellent trial preparation and trial skills which resulted in the successful prosecution of United States v. Piper.

CLEARINGHOUSE

Victim/Witness Community Services Directory

The Victim/Witness Assistance Unit for the District of Columbia United States Attorney's Office has recently compiled a Community Services Directory listing organizations which specifically assist victims or witnesses of crimes committed in the District of Columbia. The Directory serves as a reference source not only for the Victim/Witness Assistance Unit, but for all Assistant United States Attorneys.

Victim/Witness Coordinators and Assistant United States Attorneys desiring a copy should contact the Office of Legal Services on FTS 633-4024, and request CH-26.

Executive Office)

POINTS TO REMEMBER

Attorney General's Advisory Committee of United States Attorneys

The following appointments have been made to subcommittees of the Attorney General's Advisory Committee of United States Attorneys for 1986. Additional appointments may be made as new United States Attorneys are sworn in.

Subcommittees:

Affirmative Civil Litigation

Chairman, Edward S. G. Dennis, Jr., Eastern District of Pennsylvania,
Marvin Collins, Northern District of Texas
Frank W. Donaldson, Northern District of Alabama
Thomas W. Greelish, District of New Jersey
Leon B. Kellner, Southern District of Florida
Salvatore R. Martoche, Western District of New York
Henry K. Oncken, Southern District of Texas
Joseph P. Russoniello, Northern District of California
William F. Weld, District of Massachusetts
James J. West, Middle District of Pennsylvania
Robert J. Wortham, Eastern District of Texas

Drug Abuse Prevention and Education

Chairman, Daniel A. Bent, District of Hawaii
Joseph S. Cage, Jr., Western District of Louisiana

Drug Abuse Prevention and Education (Cont'd)

Edward S.G. Dennis, Jr., Eastern District of Pennsylvania
J. Alan Johnson, Western District of Pennsylvania
Leon B. Kellner, Southern District of Florida
William A. Kolibash, Northern District of West Virginia
Ronald D. Lahners, District of Nebraska
John E. Lamp, Eastern District of Washington
Robert W. Merkle, Middle District of Florida
Layn R. Phillips, Northern District of Oklahoma
Charles H. Turner, District of Oregon
Frederick J. Scullin, Jr., Northern District of New York

White Collar Crime

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Roy C. Hayes, Eastern District of Michigan
Roger Hilfiger, Eastern District of Oklahoma
James G. Richmond, Northern District of Indiana
Joseph P. Russoniello, Northern District of California
Michael R. Spaan, District of Alaska
John D. Tinder, Southern District of Indiana
Stanley A. Twardy, Jr., District of Connecticut
Robert G. Ulrich, Western District of Missouri
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John R. Byrnes, Western District of Wisconsin
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William S. Price, Western District of Oklahoma
James G. Richmond, Northern District of Indiana
John Volz, Eastern District of Louisiana
Robert Q. Whitwell, Northern District of Mississippi

Office Management

Chairman, Stephen M. McNamee, District of Arizona
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Joe B. Brown, Middle District of Tennessee
William C. Carpenter, Jr., District of Delaware
Gerald D. Fines, Central District of Illinois
William A. Maddox, District of Nevada
Peter K. Nunez, Southern District of California
George W. Proctor, Eastern District of Arkansas
John A. Smietanka, Western District of Michigan
Joseph M. Whittle, Western District of Kentucky

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Chairman, Joe D. Whitley, Middle District of Georgia
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George W. Proctor, Eastern District of Arkansas
Frederick J. Scullin, Jr., Northern District of New York
Richard S. Cohen, District of Maine
Anton R. Valukas, Northern District of Illinois
W. Thomas Dillard, Northern District of Florida
Frederick J. Hess, Southern District of Illinois
Kenneth W. McAllister, Middle District of North Carolina
Richard A. Stacy, District of Wyoming
John W. Gill, Jr. Eastern District of Tennessee

Budget

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Joe B. Brown, Middle District of Tennessee
John R. Byrnes, Western District of Wisconsin
Maurice O. Ellsworth, District of Idaho
J. Alan Johnson, Western District of Pennsylvania
William L. Lutz, District of New Mexico
Kenneth W. McAllister, Middle District of North Carolina
George L. Phillips, Southern District of Mississippi
Stanley A. Twardy, Jr., District of Connecticut

Organized Crime and Narcotics

Chairman, Peter K. Nunez, Southern District of California
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Civil Division Tort Policy Working Group

Chairman, Helen M. Eversberg, Western District of Texas
James W. Diehm, District of the Virgin Islands
Patrick M. McLaughlin, Northern District of Ohio
Robert Q. Whitwell, Northern District of Mississippi

Delegates to Criminal Division Sentencing Working Group

J. Alan Johnson, Western District of Pennsylvania
Robert W. Merkle, Middle District of Florida
John D. Tinder, Southern District of Indiana
Robert G. Ulrich, Western District of Missouri

Liaison to Attorney General's Advocacy Institute

David A. Faber, Southern District of West Virginia
William L. Lutz, District of New Mexico
Stephen M. McNamee, District of Arizona

Executive Working Group on Federal-State-Local Law Enforcement Relations

John D. Tinder, Southern District of Indiana
Joe D. Whitley, Middle District of Georgia

Delegates to National Environmental Enforcement Council

Gene S. Anderson, Western District of Washington
Frederick J. Hess, Southern District of Illinois
William S. Price, Western District of Oklahoma
Anton R. Valukas, Northern District of Illinois
Richard V. Wiebusch, District of New Hampshire

Delegates to Attorney General's Media Guidelines Committee

John W. Gill, Jr., Eastern District of Tennessee
George L. Phillips, Southern District of Mississippi

Delegate to Attorney General's Advisory Corrections Council

Frederick J. Hess, Southern District of Illinois

Items Submitted for Publication in the United States Attorneys' Bulletin.

The Executive Office for United States Attorneys, through its Office of Legal Services, Bulletin Staff, has developed a form for United States Attorneys' offices to regularly submit summaries of case decisions, with application to other districts, for publication in the Bulletin. A copy of the form is appended to this issue of the Bulletin, along with instructions for completing the form.

(Executive Office)

JURIS Data Base List

Appended to this issue of the Bulletin is the most recent revised JURIS Data Base Listing, dated January 1986.

(Justice Management Division)

Personnel

Effective January 3, 1986, Elsie L. Munsell resigned as United States Attorney for the Eastern District of Virginia.

Effective January 6, 1986, Justin W. Williams was court appointed United States Attorney for the Eastern District of Virginia.

Effective January 6, 1986, Stanley A. Twardy, Jr. was sworn in as the Presidentially-appointed United States Attorney for the District of Connecticut.

Effective January 6, 1986, Jason P. Green was appointed the Director, Office of Legal Services, Executive Office for United States Attorneys.

Effective January 6, 1986, Arnold I. Burns assumed the position of Associate Attorney General.

(Executive Office)

Potential Litigation on Libyan Executive Orders

On January 7, 1986, the President signed an Executive Order prohibiting trade with Libya and certain other transactions involving Libya, including the performance of contracts supporting industrial or other commercial projects in Libya and travel to Libya or activities within Libya by any United States citizen or permanent resident alien other than transactions necessary to

effect such person's departure from Libya until February 1, 1986. The order does not prohibit travel to or from Libya for journalistic activity by persons regularly employed in such capacity by a news gathering organization.

On January 8, 1986, the President signed a second Executive Order blocking transfers of all property of the government of Libya in the United States and in the possession of United States persons in this country or their overseas branches.

Both orders were signed pursuant to authority given the President by the International Emergency Economic Powers Act (50 U.S.C. §1701, et seq.), the National Emergencies Act (50 U.S.C. §1601 et seq.), and Section 301 of Title 3 of the United States Code. The January 7th Order was additionally supported by authority contained in Sections 504 and 505 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83), and Section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. §1514). The Secretary of the Treasury, in consultation with the Secretary of State, is authorized under each Order to carry out its provisions.

The Executive Orders referred to above are now published as Executive Order No. 12543, 51 Fed. Reg. 875 (January 9, 1986), and Executive Order No. 12544, 51 Fed. Reg. 1235 (January 10, 1986). Treasury Department regulations implementing the Executive Orders are published at 51 Fed. Reg. 2462 (January 16, 1986).

In the event that you become aware that litigation has or may be initiated that will challenge these orders or the actions taken under them, please contact immediately David J. Anderson, Director, Federal Programs Branch, Civil Division, at FTS 633-3354, or R. John Seibert, Senior Trial Counsel, Federal Programs Branch, Civil Division, at FTS 633-3395. Such suits may include actions not only against the United States and its agencies, but also between private parties whose commercial interests are affected by the Orders. Inquiries on specific aspects of the Executive Orders should be referred to Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, at FTS 376-0408.

(Civil Division)

Teletypes to All United States Attorneys

A listing of recent teletypes sent by the Executive Office is appended to this Bulletin. If a United States Attorney's office has not received one or more of these teletypes, copies may be obtained by contacting the Communications Center, Executive Office for United States Attorneys, at FTS 633-1020.

(Executive Office)

CASENOTES

CIVIL DIVISION

SUPREME COURT REAFFIRMS PRINCIPLE OF JUDICIAL DEFERENCE TO ACADEMIC DECISIONS.

In this action a medical student challenged his dismissal from the University of Michigan's combined undergraduate-MD program on the basis of poor academic performance. After a six-year history of academic difficulties, Ewing failed Part I of the National Board of Medical Examiners test, achieving the lowest score ever recorded by a University of Michigan student. The medical school's Promotion and Review Board determined to dismiss him from the program. Following unsuccessful appeals to the university, Ewing filed suit in district court claiming that he had a property interest in his status as a medical student and that the university's action was arbitrary and capricious and violated a substantive due process right because the university had a practice of permitting medical students who failed the NBME to retake it and he was the only student not permitted to retake the exam.

Following a four-day bench trial, the district court dismissed the action, specifically ruling that review of academic decisions is extremely limited and that Ewing had not alleged bad-faith or ill will in the university's conduct sufficient to establish a substantive due process claim. The Sixth Circuit reversed on substantive due process grounds stating that the arbitrary and capricious deprivation of a constitutionally recognized right could state a substantive due process violation.

Assuming, without deciding, that federal courts can review academic decisions under a substantive due process standard, the Supreme Court reversed the court of appeals decision finding that the facts of record amply support the university's decision to dismiss Ewing. In so doing the Court reaffirmed prior decisions counseling judicial restraint in review of the substance of academic decisions and emphasized its special concern for academic freedom. The government filed an amicus curiae brief in support of the university.

Regents of the University of Michigan v. Ewing, 106 S.Ct. 563, No. 84-1273 (Dec. 9, 1985). D. J. # 145-0-1665.

Attorneys: Leonard Schaitman (Civil Division) FTS 633-3441; Freddi Lipstein (Civil Division) FTS 633-3542.

THIRD CIRCUIT HOLDS THAT A TORT ACTION CHALLENGING THE INSPECTION AND SUPERVISION OF A FEDERALLY-FUNDED SEWER GRANT IS BARRED BY THE DISCRETIONARY FUNCTION EXCEPTION.

Several townships in Pennsylvania formed a Municipal Authority to construct a sanitary sewer system. The Environmental Protection Agency (EPA) awarded the Authority a grant of $8,600,000, and the Farmers Home Administration (FmHA) approved a long-term loan of $3,200,000, contingent upon the satisfactory completion of the project. The Authority obtained interim financing from the two plaintiff banks. The construction of the sewer was faulty, and a citizen's suit led to a court order directing the Authority to abate the discharge of untreated sewage into nearby waterways. EPA then refused to make its final grant payment, and FmHA refused to close its loan on the ground that the defects in the sewer system had not been corrected. The Authority defaulted on its loans from the two banks. The banks foreclosed upon the Authority's assets and brought this Tort Claims Act suit against the government for the deficiency of $3,674,129 plus interest.

The banks claimed that the two federal agencies had inspected the construction as it progressed and had negligently failed to detect the defects and to advise the banks of them. The district court granted summary judgment to the government, holding that the action was barred by the misrepresentation exception. On the banks' appeal, the Third Circuit affirmed, but based its decision upon the discretionary function exception, without reaching the misrepresentation exception. Relying upon United States v. S.A. Empresa de Viacao Aerea Rio Grandense, 104 S.Ct. 2755 (1984), the court of appeals held that the expenditure of federal funds for the sewer project was a discretionary function. It affirmed the district court's finding that the government's inspections of the project had been solely to protect its own interests, not those of the plaintiff banks. It also held that neither the statutes, regulations, nor contract documents created any duty upon the government to conduct inspections for the banks' benefit.

Pennbank and First Seneca Bank v. United States, ___ F.2d ___, No. 85-3066 (3d Cir. Dec. 20, 1985). D. J. # 157-64-713.

Attorneys: Anthony J. Steinmeyer (Civil Division) FTS 633-3388; Roger Clegg (formerly on detail to the Appellate Staff) FTS 633-2035.

ELEVENTH CIRCUIT HOLDS INTERSTATE LAND SALES FULL DISCLOSURE ACT PROTECTS PURCHASERS OF CONDOMINIUM APARTMENT UNITS SOLD PRIOR TO COMPLETION.

Plaintiff signed a purchase contract for a luxury condominium unit in Florida that did not contain a promise to deliver within two years. The seller had not registered the development, nor provided the necessary pre-sale disclosures, pursuant to the Interstate Land Sales Full Disclosure Act. Plaintiff brought this suit for rescission, as the Act provides. The district court granted summary judgment to the developer, holding that the Act was intended to protect only purchasers of "raw land." Because that decision directly conflicted with HUD's regulations, we filed an amicus brief and presented oral argument on behalf of the United States. In a decision that basically adopts our arguments, the court of appeals reversed. In particular, the court of appeals agreed with HUD that a condominium was a type of real property ownership and, as such, was properly included within the concept of "lots," the term used by Congress in the Act. The court also agreed with HUD that the Land Sales Act requirements apply at the time a sales contract is entered into, not (as the district court had held) at the time title formally is transferred. The case was remanded for trial on another issue, the outcome of which is of no interest to the government.

Winter v. Hollingsworth Properties, Inc., ___F.2d___, No. 84-5476 (11 Cir. Dec. 11, 1985). D. J. # 36-18-527.

Attorneys: John F. Cordes (Civil Division) FTS 633-3380; Bruce Forrest (Civil Division) FTS 633-4575

LAND AND NATURAL RESOURCES DIVISION

CORPS REGULATION OF ADJACENT WETLANDS DOES NOT CONSTITUTE A TAKING.

The Supreme Court unanimously reversed the Sixth Circuit and issued an opinion upholding the Corps of Engineers' regulations asserting Clean Water Act jurisdiction over "adjacent wetlands." In the opinion written by Justice White, the Court rejected the Sixth Circuit's position that the Corps' regulatory authority under the statute and its implementing regulations must be narrowly construed to avoid a taking without just compensation in violation of the Fifth Amendment. The Supreme Court held that the requirement of obtaining a permit did not constitute a taking. It stated that ultimately if a permit is denied, a taking might occur, but then a Tucker Act remedy would be available. Therefore, the possibility of a taking did not justify adoption of a

narrowing construction of regulatory jurisdiction. The Court then "easily" concluded that the property in question was an "adjacent wetlands" under the plain language of the regulations. Finally, the Court upheld the validity of the regulations. It restated the principle that an agency's interpretation of the statutes it administers should be upheld if reasonable. It reviewed the Clean Water Act legislative history and found ample justification for the Corps' conclusion that "waters of the United States" encompassed "adjacent wetlands." It could not say that the Corps' ecological judgment that wetlands affect the water quality of adjacent water bodies and function as integral parts of such bodies was unreasonable. The Court also found significant the legislative history of the 1977 amendments in which Congress refused to overrule the administrative construction of the statutory jurisdiction.

United States v. Riverside Bayview Homes, ___U.S.___, No. 84-701 (Dec. 4, 1985). D. J. # 90-5-1-1-702.

Attorneys: Ellen J. Durkee (Land and Natural Resources Division) FTS 633-3888; Anne S. Almy (Land and Natural Resources Division) FTS 633-2749.

CERCLA DOES NOT PERMIT JUDICIAL REVIEW OF EPA'S RESPONSE ACTIONS PRIOR TO INITIATION OF COST-RECOVERY ACTION.

The court agreed with our position that CERCLA does not permit judicial review of the Environmental Protection Agency's response actions prior to initiation of a cost-recovery action. The court rejected the waste generator's due process arguments and their attempts to distinguish between emergency removal actions and long-term remedial actions.

Lone Pine Steering Committee v. EPA, ___F.2d___, No. 85-5097 (3d Cir. Nov. 22, 1985). D. J. # 90-11-2-111.

Attorneys: Kathleen P. Dewey (Land and Natural Resources Division) FTS 633-4519; David C. Shilton (Land and Natural Resources Division) FTS 633-5580.

NINTH CIRCUIT HOLDS THAT DISTRICT COURT LACKS JURISDICTION TO REVIEW INTERIOR SECRETARY'S DETERMINATION OF HEIRS OF DECEASED INDIAN FOR CLAIMS JUDGMENT DISTRIBUTION PURPOSES.

Acting pursuant to the Klamath Indian Judgment Distribution Act (25 U.S.C. §§565-565g) the Secretary of the Interior determined the heirs of a deceased Klamath Indian for purposes of

distributing the decedent's per capita share of a judgment award to the tribe. The plaintiff had failed to prove to the Secretary's satisfaction that he was either the biological or adopted son, and hence the heir, of the deceased member. The statute (25 U.S.C. §565a(b)) provided that such determination "shall be final and conclusive." The plaintiff sought judicial review alleging that the Secretary applied the wrong law upon which such determination should be based. The district court dismissed for want of subject matter jurisdiction and the court of appeals affirmed.

The appeals court said that overcoming "the presumption that persons aggrieved by administrative action are afforded judicial review of that action" requires a "persuasive reason to believe that Congress intended to preclude such review." Such Congressional intent may be found either in explicit statutory proscription or in a system of remedies in the context of the entire legislative scheme. Here the court found both. The court noted the numerous statutory language variations concerning the finality of the Secretary's findings with regard to heirship and other kinds of fact finding. But, it refused to assume from these that Congress purposely varied the discretion given to the Secretary in this field. It concluded that Congress intended the Secretary "to decide finally, and without judicial review, the heirship of persons claiming interests in the judgment fund entitlements of deceased Indians."

Ruff v. Hodel, 770 F.2d 839, No. 84-3809 (9th Cir. Sept. 4, 1985). D. J. # 90-2-4-982.

Attorney: George D. Dysart (Special Assistant United States Attorney, District of Oregon) FTS 423-3660.

NINTH CIRCUIT ISSUES PRELIMINARY INJUNCTION WHERE PLAINTIFFS RAISE "SERIOUS QUESTIONS" AS TO ADEQUACY OF EIS.

The Ninth Circuit reversed the denial of a preliminary injunction against construction of a Forest Service road in southeastern Alaska. The court held that the district court had improperly read Section 708 of ANILCA (the RARE II release clause) to bar review under NEPA of whether to build a road in a nonwilderness area. The district court was also found to have erred in holding that the agency had discretion to determine the level of detail in the EIS. The court of appeals directed that an "interim injunction" should be entered since plaintiffs had raised "serious questions" as to the adequacy of the relevant EIS. The court found that sufficient irreparable harm had been shown by the mere fact that such a serious question had been raised regarding compliance with NEPA. Judge Skopil concurred with the result, but wrote separately to express his opinion that the majority had read Section 708 too narrowly.

City of Tenakee Springs v. Block, ___F.2d___, No. 84-3883 (9th Cir. Dec. 20, 1985). D. J. # 90-1-4-2688.

Attorneys: David C. Shilton (Land and Natural Resources Division) FTS 633-5580; Dirk D. Snel (Land and Natural Resources Division) FTS 633-4400.

COMMERCIAL FISHERMEN FOUND TO HAVE NO CONTRACT GUARANTEEING THEIR RIGHT TO FISH FOREVER IN EVERGLADES NATIONAL PARK.

Commercial fishermen brought this suit to challenge the National Park Service's (NPS) rules banning commercial fishing in the Everglades National Park effective December 31, 1985. The fishermen alleged (1) that they were third party beneficiaries to a contract between the United States and Florida and that the rules abridged their vested right to fish insured by that contract; (2) that NPS should be estopped from enforcing its rules because it promised never to prohibit fishing in the Park; and (3) that the rules were invalid because they were arbitrary and capricious. The district court granted our motion for summary judgment, and the court of appeals affirmed

The court of appeals examined both the agreement between the United States and Florida and Florida law and found no contract guaranteeing the fishermen the right to fish forever in the Park. Thus, it held, the fishermen had no vested property right. The court also held that NPS could not be estopped because its representations could not be construed as promises and were subject to NPS's retention of its conservation function. Thus, any alleged reliance by the fishermen on suggestions that commercial fishing would never be prohibited in the Park was unreasonable. Finally, the court held that the fishermen's claim that the rules are invalid because they depart from NPS policy was meritless in light of NPS's regulation of commercial fishing from the time the Park was established to the time the rules were promulgated. Further, the rules were fully supported by the record, especially in light of the broad discretion the NPS has in determining how best to protect public land resources.

Organized Fishermen of Florida v. Hodel, ___F.2d___, No. 84-5722 (11th Cir. Nov. 15, 1985). D. J. # 90-1-4-2165.

Attorneys: J. Carol Williams (Land and Natural Resources Division) FTS 633-2757; Jacques B. Gelin (Land and Natural Resources Division) FTS 633-2762.

UNITED STATES ATTORNEYS' OFFICES

DISTRICT OF IDAHO

DISTRICT COURT, RELYING ON BUSH V. LUCAS, DECLINES TO CONSIDER FEDERAL EMPLOYEE'S BIVENS ACTION ARISING FROM A CONFLICT OF INTEREST DISPUTE.

An employee of the Fish and Wildlife Service, Department of Interior, brought a Bivens and Federal Tort Claims Act action against a number of his supervisors and the United States. Plaintiff alleged Fifth Amendment violations arising from his supervisor's handling of a conflict of interest problem which arose from plaintiff's operation of his private business. Plaintiff sought declaratory and injunctive relief and $5,312,500 in damages. The District Court, relying upon the Supreme Court's decision in Bush v. Lucas, 462 U.S. 367 (1983), dismissed the Bivens action. Citing to the plaintiff's numerous administrative alternatives, the court concluded that the "comprehensive regulation of federal civilian employment by Congress" was a proper basis to refuse to allow the plaintiff to maintain a Bivens action even if the federal defendants had "grossly overreacted to plaintiff's conflict of interest and were overzealous in taking personnel actions against plaintiff . . ." The court also dismissed the FTCA action refusing to extend Kelley v. United States, 568 F.2d 259 (2d Cir. 1978) beyond federal driver cases.

Lewis v. Myshak, ___F. Supp.___, No. 84-1357 (D. Idaho, Dec. 20, 1985). J. D. # 157-22-396.

Attorney: Jeffery W. Ring, (Assistant United States Attorney, District of Idaho) FTS 554-1211.

ITEM FOR PUBLICATION IN THE UNITED STATES ATTORNEYS' BULLETIN

TO: Editor-in-Chief, United States Attorneys' Bulletin
1629 - Main, 10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

FROM: Name: _____ Phone No: _____

Title: _____

District: _____

A. HEADNOTE (brief description of the case):

B. CASE SUMMARY (Note: Please report only those cases which may have relevancy for other districts.):

C. TITLE OF CASE (with complete citation and DOJ number):

D. Attorney(s) to contact for further information, if different from above, include telephone number:

Dated: _____

INSTRUCTIONS FOR COMPLETING THE FORM, "ITEM FOR PUBLICATION IN THE UNITED STATES ATTORNEYS' BULLETIN"

A. Headnote. The headnote is a brief description of the holding, is in all capital letters, is underlined, and the left and right margins are 15 and 70, respectively, with the right margin justified. If the headnote is more than one line, only underline the last line.

B. Case summary. Briefly highlight the facts of the case, it's status, and it's relevance to other districts, if known. Please submit only those cases with relevancy to other districts and state that relevancy early in the case summary. Also, please limit the length of individual items to one-half page.

C. Complete case title, with citation. The Bulletin Staff follows the "Bluebook" (A Uniform System of Citation, Thirteenth Edition, The Harvard Law Review Association (1983)) recommendations for case cites, and includes the Department of Justice control number assigned to the case.

D. Attorney(s). Give the name(s), section assigned in United States Attorney's office, and telephone number(s) of the attorney(s) who can be contacted for further information about the case.

NOTE: The Bulletin Staff reserves the right to edit all copy submitted and will independently make changes to format, style, spelling, and typeface. All proposed substantive changes will be discussed in advance with the person submitting the item for publication.

JURIS DATA BASE LISTING
Revised January 1986

CASELAW

U.S. Supreme Court	178 U.S. (1900) - Slips
Federal Reporter, 2d Series	300 F.2d (1962) - Slips
Federal Supplement	332 F.Supp (1970) - Slips
Court of Claims	134 Ct. Cl. - 231 Ct. Cl. (1956 - February 1982)
Claims Court	1 Cl. Ct. (1982) - Slips
Federal Rules Decisions	73 F.R.D. (1976) - Slips
Court of Military Review	1 C.M.R. - 50 C.M.R. (1951-1975)
Military Justice Reporter	1 M.J.R. - Slips (1974 - Present)
Atlantic 2d Reporter	370 A.2d (1977) - Present (D.C. cases only)
Bankruptcy Reporter	1 B.R. (1979) - Slips

SHEPARD'S CITATIONS

United States Reports	1944 - Present
Supreme Court Reporter	1944 - Present
Lawyer's Edition (1st & 2d Series)	1944 - Present
Federal Reporter	1970 - Present
Federal Reporter Second Series	1970 - Present
Federal Supplement	1970 - Present
Federal Rules Decisions	1970 - Present
Court of Claims	1970 - Present
Court Martial Reports	1951 - Present
Military Justice Reporter	1975 - Present

STATLAW - STATUTORY LAW

Public Laws	93rd - 98th Congress (1-149 and 473)
United States Code	1982 Edition
** Executive Orders	12/31/47 - 11/1/85
Civil Works Laws	Vols. 1-4 (1790 - 1966) and Selected Public Laws to September, 1983

* New JURIS File
** Major File Additions

STATLAW - STATUTORY LAW (Cont'd)

Comprehensive Crime Control Act of 1984	Pub. L. No. 98-473 (CCCA), Pub. L. No. 98-573 (Tariff Act), Pub. L. No. 98-596 (Fine Enforcement Act) and Criminal Division Handbook on the Comprehensive Crime Control Act of 1984

DIGEST - WEST HEADNOTES

Supreme Court Reporter	1961 - advance sheets
Federal Reporter, 2d Series	1960 - advance sheets
Federal Supplement	1960 - advance sheets
Federal Rules Decisions	1960 - advance sheets
Regional Reporters (State Cases)	1967 - advance sheets

TAX

** U.S. Tax Court Decisions	Vols. 83 (2/84-Present) Vols 1-66 (11/42 - 9/76) Vols 19 - 47 (2/30-11/42)
U.S. Board of Tax Appeals Decisions Enforcement Decisions	Tax Division's Summons Enforcement Decisions Current to 3/1/84
Tax Protesters	Tax Division Tax Protester Decision List

BRIEFS - DEPARTMENT OF JUSTICE BRIEFS

Office of the Solicitor General Briefs	Briefs since the 10/1982 Term
Civil Division Briefs	Selected Appellate Briefs (11/81 - Present)
Civil Division Trial Briefs	Selected Trial Briefs (1977 - Present)
Civil Rights Division Briefs	Selected Appellate Briefs (1/80 - Present)
Land and Natural Resources Division Briefs	Selected Appellate Briefs (12/83 - Present)
U.S. Attorneys' Offices Briefs	Selected Criminal Appellate Briefs (1980-Present)

MANUAL - UNITED STATES ATTORNEYS' MANUAL

** All Titles (1-10)	Latest Paragraph Text

WRKPRDT - DEPARTMENT OF JUSTICE WORK PRODUCTS

Criminal Division Monographs	Selected Monographs
Civil Division Monographs	Selected Monographs
Criminal Division Narcotics Newsletter	July 1979 - Present

LEGHIST - Legislative Histories of Federal Laws

Equal Access to Justice Act (EAJA) Legislative History

ADMIN - ADMINISTRATIVE LAW

Published Comptroller General Decisions	Vols. 1-63 (1921-Sept. 1984)
Unpublished Comptroller General Decisions	(1/5/51 - 9/28/84)
Opinions of the Attorney General	Vols. 1-43 (1791-1980)
O.L.C. Memorandums	Vols. 1-3 (1977-1979)
Board of Contract Appeals	Vols. 56-2 to 85-2 (7/56-4/85)
Federal Labor Relations Authority Decisions & Reports on Rulings of the Asst. Sec. of Labor for Labor Management Relations	Vols. 1-17 (1/79-3/85) 1 A/SLMR - 8 A/SLMR (1/73-12/78)
Federal Labor Relations Council Rulings on Requests of the Asst. Sec. of Labor for Labor Management Relations	Vols. 1-6 (1/70-12/78)
HUD Administrative Law Decisions	Volume 1 (2/70-6/75)
Merit Systems Protection Board Decisions	Selected Decisions (2/79 - present)
Board of Immigration Appeals Decisions	Vols. 1 (1940)-18 (1984) and Slips

REGS - FEDERAL REGULATIONS

** Code of Federal Regulations	1984 Edition, Titles 32, 40-50 **1985 Edition, Titles 1-31, 33-39
Unified Agenda of Federal Regulations	October, 1985 Edition

TREATIES

Bevans: Treaties and Other International Agreements of the United States	Vols. 1-12 (1776-1949)
United States Treaties and Other International Agreements	Vols. 1-33 (1/50 - 5/83)
Department of Defense Unpublished International Agreements	(6/47 - 1/84)

FOIA - FREEDOM OF INFORMATION ACT

FOIA Update Newsletter	Vol. 1, No. 1 - Vol. 6, No. 3 (Fall 1979 - Summer 1985)
FOIA Short Guide	FOIA Case List Publication (September 1985 Edition)

FORENS - Mid-Atlantic Association of Forensic Scientists Newsletter

Scientific Sleuthing Newsletter	July, 1976 - Spring, 1985

INDLAW - INDIAN LAW

Opinions of the Solicitor (Interior)	Vols. 1 and 2 (1917 - 1974)
Ratified Treaties	1778 - 1880
Unratified Treaties	1801 - 1868
Presidential Proclamations	1879 - 1968
Executive Orders and Other Orders Pertaining to Indians	1871 - 1971

REFERENZ - TRAINING AIDS FOR JURIS USERS

JURIS Reference Manual, Parts I - IV	November 1984 Edition

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
TELETYPES TO ALL UNITED STATES ATTORNEYS

01-03-86 From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Director, Office of Legal Services, re: "Annual Survey of Corruption Prosecutions in United States Attorneys' Offices."

01-06-86 From William P. Tyson, Director, Executive Office for United States Attorneys, by Jason P. Green, Director, Office of Legal Services, re: "Motor Vehicle Theft Law Enforcement Act of 1984 (184407)."

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